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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 1, Original.

IN EQUITY.

THE STATE OF MARYLAND, COMPLAINANT,

vs.

THE STATE OF WEST VIRGINIA.

**Report of Commissioners Appointed by the Supreme Court
to Run, Locate and Establish, and Mark the Boundary
Line Between the States of Maryland and West Virginia
from the Potomac River to the Pennsylvania State Line,
1910-1911.**

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1 Supreme Court of the United States, October Term, 1911.

No. 1, Original.

Report of Commissioners Appointed by the Supreme Court to Run, Locate, and Establish, and Permanently Mark the Boundary Line Between the States of Maryland and West Virginia, from the Potomac River to the Pennsylvania State Line.

1910-1911.

2 Supreme Court of the United States, October Term, 1909.

No. 1, Original. In Equity.

THE STATE OF MARYLAND, Complainant,

vs.

THE STATE OF WEST VIRGINIA.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

We, Julius K. Monroe and Samuel S. Gannett, two of the Commissioners appointed under the decree of the Court rendered May 31, 1910, "to run, locate, and establish and permanently mark with suitable monuments the said Deakins or 'Old State Line' as the boundary line between the States of Maryland and West Virginia from said point (low water mark) on the southern bank of the North Branch of the Potomac River to the said Pennsylvania line, etc.," have the honor to submit the following report, and map entitled, "Map Showing The Boundary Line Between Maryland and West Virginia, from the Potomac River to the Pennsylvania State Line, as surveyed and marked under the decree of the Supreme Court of the United States, rendered May 31, 1910," etc.:

The party was organized and went into camp on July 12, 1910, on Arnold's Ridge, about one mile north of the North Branch of the Potomac River, and immediately began the survey of the line.

Beginning at the Fairfax Stone, a line was first run North $0^{\circ} 56' E$. along a well marked line to a planted stone marked "1101B", at the southwest corner of Military Lot, No. 1101, originally a

3 "bounded maple standing one mile north from a stone fixed by Lord Fairfax for the head of the North Branch of the Potowmack River." The intersection of this line with the south bank of the North Branch of the Potomac (at low water mark) was, under the decree of the Court, fixed as the corner of Maryland and West Virginia, and monument No. 1 was therefore erected at this place and became the initial point of the boundary line run in 1910 and 1911.

From the corner of lot 1101B, where monument No. 2 was erected, the line deflects slightly to the west and follows the old marked line

on the course N. $0^{\circ} 47' 53''$ E. as identified by the surveyors in the case in 1897 and shown on the maps filed by the defendants. This line crosses Arnold's Ridge, Laurel Run, Backbone Mountain, Youghiogheny River, and where it intersects the 3rd line of a Maryland tract called "Covent Garden" monument No. 4 was erected and an offset was made to the west. The 3rd line of Covent Garden was followed for a distance of 402.15 feet on the course N. $71^{\circ} 48' W.$ (true) to a planted stone, acknowledged by residents and owners of adjoining property and pointed out by them as being the limit of their respective claims, at this point. Monument No. 5 was built over this stone and the line was run N. $0^{\circ} 27' 04''$ E. in a manner to follow the property lines, as acknowledged by the citizens of the two states; passing over the center of a planted stone property corner, which marked the beginning of the Maryland tract called Mount Pleasant, surveyed in 1774. Monument No. 6 was built over and around this stone, which was pointed out by witnesses as marking the place of the original corner, a white oak tree. Continuing on the same course, a large anciently marked white oak tree was reached

and identified as the beginning of a Virginia tract of land surveyed for John Pettyjohn in 1781, and also a corner of John T. Goff 1000 acres, survey made in 1782, both of which call for the boundary line. This tree was cut and blocks taken out by your Commissioners which showed surveyors' axe marks in the wood; one 130 years old, one 117 years, and the last 78 years, thus indisputably establishing this course as following the oldest marked line extant. The stump of this tree was removed and monument No. 8 was built in the exact spot occupied by it. Upon trial it was found that from this white oak, northward, the line between property holdings of citizens in the two states, verged to the eastward, and a slight angle was therefore made to the east and the boundary line run N. $0^{\circ} 42' 57''$ E. to the stump of a bounded sugar tree, the northwest corner of a Maryland tract called Eelshine; this tree, while standing, was identified by the surveyors in this case in 1897, and also by the owners of the tract. The land, since that time has been cleared, and the timber destroyed by fire. The stump of this sugar tree was again pointed out to the Commissioners, in 1910, by Peter F. Nine, the present owner of the tract Eelshine. This stump was removed and monument No. 10 erected exactly where it stood.

From this point the boundary line runs S. $89^{\circ} 17' 03''$ E. 482.3 feet along the line common to the tract Eelshine and the Virginia Grant to Wm. Ashby for 50 acres, to the southwest corner of the Maryland tract called Buckdale. As the southwest corner of Buckdale and the southeast corner of the Ashby 50 acre tract, which are common, could not be definitely located upon the ground, as all original objects marking them have been destroyed, this point was determined by the intersection of a line produced southward passing through known and accepted points in the "Old Line," namely:

"the stake and stone pile," on Lauer Hill, which is the common corner of the Maryland tract called "Maryland," and the Virginia grant to John Hoyer for 500 acres, and which was identified and located by the surveyors in this case in 1897, and

shown at Red "C-6" upon Map No. 1, filed by defendants, and again identified by your Commissioners in 1910; and a point north of the B. & O. Railroad near Hutton, Maryland, in the property line between lands of the Connell Heirs and George Morris. Monument No. 11 was placed at the intersection of the line above described with the line eastward from Monument No. 10. The course of the boundary from monument No. 11, as above determined, is N. $0^{\circ} 41' 02''$ E. following closely the lines of the original Virginia grants, and passing through, or very near the several points indicated upon map No. 1 filed in this case by defendant, and testified to as standing in the "Deakins, or Old State Line," to a point on Glover's Hill, $1\frac{1}{2}$ miles north of the Baltimore & Ohio Railroad, where Monument No. 15 was erected. From this point northward it was found that the general course of the property lines verged slightly to the west, and the course of the boundary was here changed to N. $0^{\circ} 22' 27''$ E. to conform thereto, following the well marked divisional lines between the F. & W. Deakins 6000 acre Virginia grant, and the Maryland Military Lots (Nos. 1237 to 1245) and the eastern line of the Hoyer and Martin 3600 acre Virginia grant, passing over the summits of Snaggy Mountain and through the southern end of the Pine Swamp to a point where this line intersects the southern line of the John Crane 776 acre Virginia grant, a short distance north of the Cranesville and Oakland road, as indicated upon the maps filed by the defendant in this case. This point was determined by reproducing upon the ground the southern line of said 776 acre Crane Survey. Monument No. 19 was erected at this point.

6 From Monument No. 19 an offset of 971.09 feet was made along the south line of the John Crane 776 acre tract N. $89^{\circ} 27' 27''$ E. to its intersection with the west boundary of Maryland Military Lot No. 1292, where Monument No. 20 was built. The boundary here turns northward, following the west limit of Military Lots 1292, 1294, 1296, 1298, 1400, & 1402 as laid out by Francis Deakins, on a true course of N. $0^{\circ} 17' 00''$ E. to the northwest corner of Military Lot 1402. Monument No. 21 was placed at this point and an offset made 53.69 feet S. $89^{\circ} 43' 00''$ E. along the north side of Lot 1402, (which is also the division line between lands of E. F. Jenkins and M. H. Frankhouser), where Monument No. 22 was erected.

From Monument No. 22 the course of the boundary is N. $0^{\circ} 24' 42''$ E., passing through, or near the point where a large marked Red Oak formerly stood, testified to in this case by Ethbell Falkenstine, as standing in the Deakins or Old State Line, and shown at the letters "W-K" upon the maps heretofore filed; a planted stone, a short distance north of the Red Oak in the east line of the Henry Banks Survey of 8000 acres, and following a well marked line along and with the eastern boundary of the Banks Survey and the western boundary of the Maryland tract called "Canrobert" to a point where it intersects the south line of the 328 acre tract granted by Virginia to Henry Deal, and passing through the same, to a point where the east line of the Banks Survey intersects the south line of a tract

of 367 acres granted by Virginia to Henry Deal, where Monument No. 27 was erected.

From Monument No. 27 an offset was made 347.3 feet N. $89^{\circ} 25' 12''$ E. along the line between the two Henry Deal tracts above mentioned, where Monument No. 28 was placed.

7 From Monument No. 28 to Monument No. 32 the course of the boundary is N. $0^{\circ} 20' 07''$ W. and closely follows the mutually accepted property lines of citizens of the two States; corners, trees, and fences having been pointed out by various land owners on both sides of the "Old Line." Monument No. 32 replaces a large marked Spanish Oak, which was a common corner of lands owner by John and George W. Vansickle, in West Virginia, and in the west line of land owned by W. M. Fike in Maryland. This tree was cut down and the stump removed by your Commissioners in 1911. From this point northward it was found that the old accepted boundary line veered slightly to the east, and the course of the boundary line was therefore changed to N. $0^{\circ} 4' 55''$ E. to conform to it.

Monument No. 34 was set at the intersection of this line with the southern boundary line of the State of Pennsylvania.

In addition to the monuments just mentioned as standing at the angular points in the boundary, others were set between, exactly in line, (See description of Monuments).

The total number of large monuments erected along the Maryland-West Virginia boundary line is 34, in addition to the one restoring the "Fairfax Stone." Of small monuments, 26 were erected, making a total of 60 permanent marks. The line is also marked at suitable places by 5 copper bolts securely fastened into natural and planted rocks.

A description of instruments and methods used in the survey, the method of constructing the monuments; location, latitude, longitude, approximate elevation, distance, true and magnetic bearings, will be found in the following pages.

Instruments.

The following instruments were used in making the survey: Theodolite, $7\frac{1}{2}$ inch No. 11, United States & Canada Boundary Survey, temporarily loaned during 1910 to this Survey. In 1911, $7\frac{1}{2}$ inch theodolite No. 219 of United States Coast & Geodetic Survey, loaned by the Superintendent of that Bureau in place of No. 11. No. 219 is lighter, works more freely, and is altogether much more satisfactory than No. 11. The circles on both theodolites are graduated to $10'$ spaces and read by verniers to $10''$. With these instruments the line was ranged out from hilltop to hilltop and flagpoles set at intervals of 1 to 4 miles.

2 Gurley transits, circles $5\frac{1}{2}$ inches diameter reading by vernier A. to minutes and by vernier B to hundredths of a degree, loaned by Julius K. Monroe. With these transits the line was run from flagpole to flagpole, previously located with the theodolite, in the

usual manner with double backsights and foresights. The length of foresight was limited by the length of tape, 500 feet; the length of backsight was limited only by the visibility of the rear tripod. Instead of the ordinary rods for lining in, brass plumb bobs weighing 2 pounds each, supported by tripods 7 feet high, with movable heads were used. As sights were taken on the string supporting the plumb bobs, the line was produced with great accuracy. A brass tack was set in a solid hub at each transit station.

Distances.

Distances were measured to the nearest $1/100$ of a foot with a 500 foot standardized steel tape, supported at several points along its length so as to have a uniform slope, approximately parallel to the slope of the ground.

9 The inclination or slope of the tape was measured by the vertical circle on the transit and the horizontal distance and difference in elevation carefully computed.

Besides the 500 ft. steel tape, which was graduated to single feet, except at each end, where 1 foot was graduated to tenths, a 100 foot steel tape graduated throughout to feet, tenths and hundredths was used for shorter measurements.

Astronomical Observations.

Astronomical observations for azimuth were obtained with the theodolite by observing Polaris near eastern elongation. Ten measurements of the angle between star and mark were made with telescope direct and reversed in 5 positions of the circle. The mark was a bull's-eye lantern placed at one of the transit stations a mile or more distant, northward. Time was obtained from the railroad; a mean time Waltham watch being compared with 75th meridian time as sent by telegraph from the United States Naval Observatory at Washington each noon, and proper reduction was made for difference in longitude. Azimuth observations were made at 8 stations along the boundary line, 36.7 miles in length; usually at or near a point of deflection in the final line.

Geodetic Positions.

At a point near Cranesville, West Virginia, 24 miles north of the Fairfax stone and 12 miles south of the Pennsylvania line, connection was made with Piney Swamp triangulation station located by the United States Geological Survey by a belt of triangulation extending westward from Maryland Heights and Sugarloaf, 2
10 primary triangulation stations of the Coast and Geodetic Survey. The geodetic position of Piney Swamp station is on United States Standard datum, and is thus free from station error. A portion of the boundary line, 1.9 miles east of this station, measured during the progress of the survey, was used as a base line, and by

measuring all the angles in 2 triangles accurate connection was made with this triangulation station. From these data the geodetic positions of all large monuments were computed.

Elevations.

The approximate elevations of all stations were determined by carrying a line of vertical angle measurements along the boundary. The elevation of Fairfax Stone was accepted as 3162 feet above mean sea level as derived from railroad levels, and checks on the heights as computed from this, were obtained at 5 points from the topographic work of the United States Geological Survey, as follows: Near Guegy Church; at the crossing of the Northwestern Pike; at Hutton; near Cranesville; and at the intersection of the Maryland-West Virginia line with the Pennsylvania state line. The apparent errors at these check points were distributed at the various stations in proportion to the distance.

11

MONUMENTS.

List of Monuments from the Fairfax Stone to the Pennsylvania Line, Giving the Size, Method of Construction, and Location,—Together with the Latitude and Longitude of Each of the Principal Monuments.

The Principal Monuments are uniform in size and shape, and consist of a moulded concrete column, twenty two inches square at the base, tapering to ten inches square at four feet in height, (top of mould) and finished, in a few instances, with rounded top, but generally in flat, pyramidal shape, extending four to five inches above the top of mould, or form, making the entire column four feet four inches in height above base; the corners are beveled one and one half inches in width to prevent defacement.

Inscriptions: Each Monument, beginning with the initial one at the North Branch of the Potomac River, is numbered consecutively from 1 to 34 Northward to the Pennsylvania State Line; the numbers and the names of the Commissioners being placed upon the south face of the monument, except where set diagonally; the date, 1910, on the North face; the letters MD. on the East, and W. VA. on the West. The letters MD., and W.VA., are $3\frac{1}{4}$ inches in height and $\frac{3}{8}$ inch deep; the numbers, $2\frac{3}{4}$ inches high, and $\frac{5}{16}$ inch deep, and the names of Commissioners, one inch in height and of proportional depth. The inscriptions were moulded in the monuments, when built, (except the monument at Fairfax Stone, and Nos. 1 and 2) by means of reversed bevel faced brass and lead pattern letters, which were attached separately to the inside of the "forms"; subsequently the letters MD., W. VA., the names of Commissioners, and the date, 1910, were soldered on plates of tin reinforced with heavy sheet iron, which were securely fastened to the forms with screws. These plates were depressed slightly below the surface, which, on the finished monuments formed corresponding elevations.

12

Material.

Three bags (300 pounds) best Portland cement, and seven bags (700 pounds) washed, white sand, were used in each of the large monuments. The cement and sand were thoroughly mixed before and after adding water. This material was firmly tamped in the "form," the top being finished with an ordinary mason's trowel. No stone was used in the monument.

Base.

The base of each of the principal monuments was made of concrete, the usual size being $3\frac{1}{2}$ feet square, and $2\frac{1}{2}$ feet deep, depending upon the character and formation of the ground; in all cases sufficient depth and breadth being obtained to insure stability.

The average amount of material used in each base, was $\frac{3}{4}$ barrel of best Portland cement, 1200 pounds of sand, and 1500 to 2000 pounds of broken stone. The cement and sand were thoroughly mixed before and after adding water; cement and stone were placed in the excavations in alternate layers and the whole thoroughly tamped and bonded. The base was finished and cross-lines indicating its exact center marked upon it, and when firm enough to sustain the weight of the monument, the "form" was set up and carefully centered by means of the cross-lines, and the monument built before the final "set," thus forming the base and column into one solid mass. In the few instances where the bases were built a day or more before the monument, a large stone was set in the center of the base and allowed to project a foot or more above the surface, and the monument built around it, thus securing a firm bond.

13

Small Monuments.

Small monuments are also of concrete, uniform in size, 1 foot square, and 2 feet high, moulded in a wooden form, without taper, and contain 1 bag (100 pounds) cement, and 2 bags (200 pounds) washed, white sand. The top was finished in a similar manner to the large monuments. The letters MD. cut on the east face, W. VA. on the west, and the date, 1910, on the north. The base, 2 feet square and 2 feet deep, also of concrete, and built as in the larger monuments. One bag of cement and four bags of sand, in addition to the broken stone, were used.

14

The "Fairfax Stone."


The "Fairfax Stone" stands at the head of the North Branch of the Potomac River. It derived its name from Thomas, Lord Fairfax, who became the proprietor of what was known as the "Northern Neck of Virginia." The original grant was made in 1663, by Charles II of England, and subsequently successively confirmed by James II

and George II. The title having rested by transfers in Lord Fairfax, on the 7th of September, 1736, Commissioners were appointed, with the approval of George II. to define the boundaries of the grant, which was to be "all the land lying and situate between and within the heads of the Rivers Rappahannock and Potomac, the courses of the said rivers together with the rivers themselves." The survey of the upper part of the Potomac River was made in 1736, and at the head spring as then determined a number of trees were marked by the surveyors. A dispute arose between Lord Fairfax and the representatives of the Colony of Virginia as to the source of the Potomac, and no further work or agreement reached until 1746, when representatives for each side having been named, the survey was resumed and a line was run from the head of the Rappahannock to the head of the Potomac River. The trees and springs located in the former survey of 1736, as the head of the Potomac having been found, the course of the trial line was corrected and the final line run in the reverse direction from the Potomac to the Rappahannock.

Before leaving the head of the Potomac, additional trees were marked and a stone set up, described as follows, in the note book (still in existence) of Thomas Lewis, one of the surveyors: "October 23, 1746, Returned to the spring where we made the following marks:—" on another Beach WB WR 1746 Y3—a

stone by the corner pine marked FX, on a Beach marked AC." This done, we bid adieu to the head spring about $\frac{1}{2}$ hour after nine o'clock, our course directing to the head of Rappahannock bearing S. 46° E. 30 poles the top of the mountain in the spring heads on."

When Lieut. N. Michler made his survey of the meridian line north from the Fairfax Stone in 1859, he thus describes the stone in his report. "The initial point of the work,—the Fairfax Stone,—stands on a spot encircled by several small streams flowing from springs about it. It consists of a rough piece of sandstone, indifferent and friable, planted to the depth of a few feet in the ground and rising a foot or more above the surface, shapeless in form, it would scarce attract the attention of the passer by. The finding of it was without difficulty, and its recognition and identification by

the inscription , now almost obliterated by the corroding action of water and air. In order not to disturb this stone the first observatory was built immediately in the rear (South) of it." Here, later, Michler built his monument, which was about 4 feet in height and made of several hewn stones, the upper ones being conical. The original Fairfax Stone was in existence until about the year 1883, when it was destroyed by vandals and subsequently carried away, leaving the Michler monument as the only marker.


The stream surveyed in the year 1736 was what has since been designated the North Branch of the Potomac River. The source, designated as the Fairfax Stone, is upon the divide between the eastern and western water sheds. It is $\frac{1}{4}$ mile northerly from the summit of the Western Maryland Railroad, which is here the highest point on that line between Cumberland, Maryland, and Elkins, West Virginia.

The stone is easily reached by a trail from Fairfax Station, which is $\frac{1}{2}$ mile to the south east. The large timber all around has been cut by mill men and fire has destroyed the balance so that the immediate spot is now largely covered by brush and briars. The land near the Fairfax Stone is principally owned by the Davis Coal & Coke Company (in 1910).

On August 12, 1910, during the present work, a new concrete monument was built, replacing both the previous marks. The new monument stands 2 feet North of the center of the base of the Michler Monument, which point was marked by a brass bolt bedded level with surface of the ground. This rock and mark are still left in place but are not visible, and the mark is 1 foot north of the point where the original stone stood. The portion of the Michler Monument above ground was removed.

"Fairfax Stone," Restored 1910.

The base is of concrete $3\frac{1}{2}$ ft. square and 2 ft. deep set flush with surface of ground. On this base the monument was built, utilizing the form which had been designed for, and was afterwards used in the construction of the monuments along the boundary from the Potomac River to the Pennsylvania line. The monument is 22 inches square at the base and 10 inches square at the top, the latter being built up a few inches and rounded off. The total height being 4 ft. and 4 inches above the base. The monument contains $3\frac{1}{2}$ bags of best Portland Cement and $6\frac{1}{2}$ bags of white sand. It is marked

as follows: On South face  On North face 1910.
1746

The corners are beveled $1\frac{1}{2}$ inches in width.

Latitude $39^{\circ} 11' 41.92''$ Longitude $79^{\circ} 29' 15.50''$.

17

Monument No. 1.

This monument marks the initial point of the present Boundary Survey. It is on the south bank of the North Branch of the Potomac River, 3983 feet N. $0^{\circ} 56'$ E. (true) from the Fairfax Stone. The base is $3\frac{1}{2}$ ft. square and 4 ft. deep and tapers to $2\frac{1}{2}$ ft. square at its top. The monument is placed diagonally on this base and is marked as follows:

On the Northeast side	1910	On the Southeast side	W. VA.
	MD.		
On the Southwest side	No. 1	On the Northwest side	W. VA.
	W. VA.		

It can be reached from the Fairfax Station of Western Maryland Railroad by following an old lumber train road which goes within 100 yards of the river. From the north on Maryland side there is a

bridle path leading from the County Road on Arnold's Ridge, to a point almost in sight of this monument, $\frac{1}{2}$ mile distant.

Latitude $39^{\circ} 12' 21.34''$ Longitude $79^{\circ} 29' 14.67''$.

Monument No. 2.

Is in place of a maple tree marked "1101" which was the beginning of the Maryland Military Lot 1101. It can be reached from the county road on Arnold's Ridge by the same trail that leads to the river. It is less than $\frac{1}{4}$ mile from top of the ridge and about 1 mile west of Eli Mosser's house. The boundary line makes a slight angle to west at this point.

Latitude $39^{\circ} 12' 33.28''$ Longitude $79^{\circ} 29' 14.42''$.

Arnold's Ridge.

A small monument on the highest point of Arnold's Ridge. It is one mile west of house of Eli Mosser and can be reached
18 by the county road along the Ridge.

Monument No. 3.

On summit of Backbone or Great Savage Mountain. The base of monument rests on the solid ledge which forms the crest of the mountain. It is reached with difficulty by an old road crossing the mountain from Eli Mossers to Sommers Mossers upon the west and is more than $\frac{1}{4}$ mile west of this trail over rough, rocky ground. It can most readily be reached from the west. There is an extended view from this summit as far north as Snaggy Mountain.

Latitude $39^{\circ} 14' 12.43''$ Longitude $79^{\circ} 29' 12.65''$.

Stahlnaker Ridge.

A small monument about 1 mile west of Sommers Mossers, and $\frac{1}{2}$ mile southwest of county road from Gnegy Church to Breedlove.

Monument No. 4.

Just north of the Youghiogheny River and south of a county road from Gnegy Church to Breedlove. It is in the line of a Maryland land grant called Covent Garden and in property line of Wm. Bittner and Oscar Roth. It is $\frac{3}{4}$ mile south of Gnegy Church and is easily reached. The monument stands diagonally as the line here changes its course to the westward.

Latitude $39^{\circ} 15' 15.73''$ Longitude $79^{\circ} 29' 10.84''$.

Monument No. 5.

About 100 yards north of county road from Gnegy Church to Breedlove and in sight of road. It is in a line of the Covent Garden Survey, and is in or near property lines of Wm. Bittner, Chas. Win-

ters, Oscar Roth, and J. Stahlaker. The monument was built over and around a rough stone marking property corners and stands diagonally as the course of the boundary line here turns northward.

Latitude $39^{\circ} 15' 54.97''$. Longitude $79^{\circ} 29' 15.69''$.

Monument No. 6.

On the south side of the county road from Oakland to Horse Shoe Run, 100 yards southwest of the cross roads at Gnegy Church. On or near the property line of Daniel Gnegy and Elijah Bechtel. The monument was built over and around a stone property corner which marked the beginning of the Maryland land grant called "Mount Pleasant" surveyed in 1774. The original beginning called for was a white oak tree, now gone. The stone was pointed out as said beginning by Daniel Gnegy.

Latitude $39^{\circ} 16' 31.10''$. Longitude $79^{\circ} 29' 15.32''$.

Hamstead Hill.

A small monument on the Old Hamstead Hill, $\frac{2}{3}$ of a mile east of the southwest prong of the Youghiogheny River and $\frac{3}{4}$ mile north of Gnegy Church. The monument is 45 feet north of an east-west wire fence and 5 feet west of a north-south line fence.

20

Monument No. 7.

Situated 15 feet south of center of county road from Cash Valley to the Horseshoe Run road and $1\frac{1}{2}$ miles east of Eglon, West Virginia. The land on the east of monument is owned by George H. Gauer and that on the west by William Weimer.

Latitude $39^{\circ} 17' 46.83''$. Longitude $79^{\circ} 29' 14.56''$.

Monument No. 8.

About $1\frac{1}{2}$ miles northeast of Eglon, West Virginia, and 150 yards east of house of Silas Fike. This monument marks the spot where stood a large white oak tree called for in the Virginia Patent to John Pettyjohn, surveyed May 30, 1781 for 400 acres. The call being at "a white oak in the Maryland line and running—and finally to pointers in the Maryland line and with said line N. 226 poles to the beginning." This tree was blocked during the survey of 1910 and the oldest mark counted 130 years growth, the second 117 years, and the third 78 years. The block was saved. The tree was cut down and stump blown up with dynamite and replaced by the monument which now marks property holdings of Silas Fike, Amelius Fike, and Seymour Hamstead. There is an angle to the east in the boundary line at this point.

Latitude $39^{\circ} 17' 52.63''$. Longitude $79^{\circ} 29' 14.50''$.

Silas Fike's Ridge.

A copper bolt set in a rock with the ground on summit of a flat timbered ridge $\frac{1}{4}$ mile north of house of Silas Fike, who lives $1\frac{1}{2}$ mile northeast of Eglon, West Virginia.

21

Dawson's Hill.

A small monument on wooded hill of Lloyd Dawson, about $\frac{3}{4}$ mile south of the Northwestern Pike. It is 26 feet west of north-south fence and 195 feet north of an east-west fence.

Monument No. 9.

Situated 8 miles southwest of Oakland, Maryland, in the angle formed by the Northwestern Turnpike and the county road from Eglon, West Virginia, to Oakland. The monument is 100 yards east of the Youghiogheny River and is on a slight ridge between above described roads and can be seen from them.

Latitude $39^{\circ} 19' 07.64''$. Longitude $79^{\circ} 29' 13.29''$.

Offutt's Hill.

A small monument on summit of wooded hill belonging to D. E. Offutt, $\frac{1}{4}$ mile north of the Northwestern Turnpike and 10 feet east of a north-south fence.

Stahl's Hill.

A small monument on summit of Stahl's Hill, 20 feet west of an old split rail fence running north and south and is on land owned by Peter F. Nine.

Monument No. 10.

In an open field about 300 yards south of a county road running east and west across the Youghiogheny River. The monument stands in place of a sugar tree which formerly stood here and marked a corner of the Maryland grant called "Eelshine." The place was pointed out by Peter F. Nine, who owns the property east of it. John Bittner owns the land to the west and his house is 100 yards west of the monument. The boundary line turns to the east and the monument stands diagonally.

Latitude $39^{\circ} 20' 39.47''$. Longitude $79^{\circ} 29' 11.82''$.

Monument No. 11.

Situated 482 feet east from Monument No. 10, as there is here an offset in the line. It is in the line of Eelshine and Ashby 50 acre survey, and stands diagonally as boundary line here turns to north.

Latitude $39^{\circ} 20' 39.41''$. Longitude $79^{\circ} 29' 05.68''$.

Monument No. 12.

Is upon the south side of the county road from Brookside, West Virginia, to Oakland, Maryland. It is about 100 feet north of the Youghiogheny River on land of Dorsey Ashby and about 100 yards southwest of his house.

Latitude $39^{\circ} 21' 04.15''$. Longitude $79^{\circ} 29' 05.30''$.

Ashby's Hill.

A small monument on summit of a flat ridge owned by Dorsey Ashby, $\frac{1}{4}$ mile northwest of road from Brookside to Oakland, and $\frac{1}{4}$ mile northwest of Mr. Ashby's house.

Laurer Hill (South Brow).

A copper bolt set in a rock 6 by 6 by 20 inches set flush with surface of ground, on south brow of Laurer Hill $\frac{3}{4}$ mile south of house of Charles Fulk. It can be reached from the north by road and trail through the woods.

Monument No. 13.

On the summit of Laurer Hill about 6 miles southwest of Oakland, Maryland. The monument can be reached by a trail running south from a road to a coal mine near Chas. Fulk's house, which is on the north side of Laurer Hill about $\frac{1}{2}$ mile from summit. The land is covered with timber and is owned by Daniel E. Offutt.

Latitude $39^{\circ} 22' 02.42''$. Longitude $79^{\circ} 29' 04.40''$.

Miller.

A small monument on summit of flat $\frac{1}{2}$ mile north of Laurel Run, on land owned by J. S. Miller. It can be reached by road from Crellin, Maryland, which is $1\frac{1}{2}$ miles to the east.

Poling.

A small monument on a timbered ridge $1\frac{1}{2}$ miles northwest of Crellin, Maryland, and on land owned by Zach Poling. It is 120 feet south of a 2nd class road crossing the ridge.

White.

A small monument $\frac{3}{4}$ mile south of Hutton, Maryland, on northwest side of a 2nd class road and is on land owned by Charles White.

24

Monument No. 14.

Is about 200 yards west of Hutton, Maryland, Station, B. & O. R. R., and close to south limit of right of way of main line of that

railroad. It is north of wagon road from Hutton, Maryland, to Corinth, W. Va., is conspicuously placed, and can be seen from trains as they pass. It is near lands of John A. Connell, Chas. White, and Grant Felton.

Latitude $39^{\circ} 25' 08.88''$. Longitude $79^{\circ} 29' 01.54''$.

Morris-Connell.

A small monument on summit of flat ridge cleared on west and timbered on east. It is $\frac{1}{2}$ mile north of Hutton, Maryland, and is on land owned by George Morris on the west and J. A. Connell on the east.

Monument No. 15.

About $1\frac{1}{2}$ miles north of Hutton, Maryland, or Corinth, West Virginia, and can be reached by road from Corinth. The monument is on cleared land owned by Dennis Glover. There is a slight deflection of the boundary line to the westward at this point.

Latitude $39^{\circ} 26' 07.60''$. Longitude $79^{\circ} 29' 00.63''$.

Severe.

A small monument on north side of county road 2 miles north of Corinth, West Virginia. On land owned by John M. Browning.

Browning.

25 A small monument on summit of a flat wooded ridge owned by John M. Browning, $2\frac{1}{2}$ miles north of Corinth, West Virginia.

Camp Rocks.

A copper bolt set in a hole drilled in top of and near the north-east corner of a rocky bluff on south slope of Snaggy Mountain. 700 feet south of old Burchinal road. Stones are piled around and over the bolt. From this point, Glover's Hill, Backbone Mountain, and other distant points southward can be seen.

Burchinal.

1st. A small monument on top of a large flat rock 20 feet south of old Burchinal road which crosses Snaggy Mountain near this place.

2nd. A copper bolt set in solid rock 350 feet north of the small monument described above.

3rd. A copper bolt set in solid rock 1400 feet north of small monument described above.

Monument No. 16.

One one of the main summits of Snaggy Mountain about 1281 feet east of the "Fairfax Meridian," and 75 yards from a rough road to fields on top of mountain. It can be reached from the Burchinal Road, which comes out at White Oak Spring on the road to Terra Alta.

Latitude $39^{\circ} 29' 07.98''$. Longitude $79^{\circ} 28' 59.11''$.

26

Monument No. 17.

Is on the very high north summit or brow of Snaggy Mountain and is one of the highest points along the boundary line, being about 3070 feet above mean sea level. It can be reached either from a trail which crosses through the gap between Mountains 16 and 17, or from the Cranesville-Oakland road above Brownings Lake, or by climbing this steep side of the mountain just south of Pine Swamp.

Latitude $39^{\circ} 29' 50.50''$. Longitude $79^{\circ} 28' 58.75''$.

Teets.

A small monument on north side of county road which crosses Pine Swamp about 3 miles south of Cranesville, West Virginia. The monument is about 1000 feet south of house of Eugene Teets.

Monument No. 18.

On the north side of the county road from Cranesville, West Virginia, to Oakland, Maryland, and is about 3 miles south of Cranesville, 100 yards east of house of Eugene Teets, and west of Muddy Creek, and on the edge of Pine Swamp, which has here been drained.

Latitude $39^{\circ} 31' 38.50''$. Longitude $79^{\circ} 28' 57.84''$.

Monument No. 19.

Is about $2\frac{1}{2}$ miles southeast of Cranesville, West Virginia, and is on the western edge of the Pine Swamp about 100 yards from solid ground. The foundation of the monument rests on hard sand 4 feet below the surface. The timber and brush near the monument are mostly dead or burnt. The land is owned by Hiram Ringer. The monument is set diagonally as the line turns abruptly east.

Latitude $39^{\circ} 31' 53.96''$. Longitude $79^{\circ} 28' 57.71''$.

Monument No. 20.

Near the middle of Pine Swamp about 3 miles southeast of Cranesville, West Virginia, $\frac{1}{3}$ mile west of house of John H. Sommers and

50 feet west of Muddy Creek. The base of the monument is 4 feet square and 6 feet deep, resting on a sticky clay. The surface of the swamp near this monument is very soft and all material had to be drawn by men on a sled for a distance of 200 yards. The land is owned by Hiram Ringer, and the adjoining land to the east by John H. Sommers. The Monument is set diagonally.

Latitude $39^{\circ} 31' 54.05''$. Longitude $79^{\circ} 28' 45.32''$.

Monument No. 21.

One mile east of Cranesville, West Virginia, in a small ravine, and is on property line between M. H. Frankhouser and E. F. Jenkins at the Northwest corner of Maryland Military Lot 1402, at the end of 2nd line. It is 200 yards northwest of M. H. Frankhouser's house, 50 yards west of county road and on northeast side of Pine Swamp. The Monument stands diagonally as the line turns to the east.

Latitude $39^{\circ} 33' 08.69''$. Longitude $79^{\circ} 28' 44.85''$.

Monument No. 22.

Is 53.69 feet eastward from Monument 21 in the same ravine, and about 100 feet west of the county road. It stands in the 2nd line of lot 1402 and is also on the property line between Frankhouser & Jenkins. The Monument stands diagonally as the boundary line turns northward again.

Latitude $39^{\circ} 33' 08.68''$. Longitude $79^{\circ} 28' 44.16''$.

Monument No. 23.

Is about 1 mile east of Cranesville, West Virginia, 80 feet north of county road from that place to Sang Run, Maryland. It is on a bank above a large spring and is on cleared land owned by J. G. Elsey, and is 50 yards north of house of E. F. Jenkins.

Latitude $39^{\circ} 33' 22.93''$. Longitude $79^{\circ} 28' 44.02''$.

Elsey's Hill.

A small monument on summit of flat cultivated ridge, 1 mile east of Cranesville, on land owned by J. G. Elsey, and $\frac{1}{4}$ mile north of house of E. F. Jenkins.

Latitude $39^{\circ} 33' 34.93''$. Longitude $79^{\circ} 28' 43.92''$.

Strawser Road.

A small monument on north side of road from Cranesville, West Virginia, to Sang Run, Maryland, about $1\frac{1}{2}$ miles northeast of Cranesville and on land owned by Samuel A. Strawser.

Fike's Mountain (South Brow).

29 A small monument on South Brow of Fike's Mountain, 2 miles northeast of Cranesville. It can be reached by a rough road through the woods.

Monument No. 24.

On summit of Fike's Mountain $2\frac{1}{4}$ miles northeast of Cranesville, West Virginia. It can be reached by a rough trail through the woods from a wagon road which crosses the mountain $\frac{1}{2}$ mile west of Monument. The summit of the mountain is comparatively flat and no distant large monuments can be seen. The small monument on the south brow is visible as well as small monument on north brow.

Latitude $39^{\circ} 34' 49.21''$. Longitude $79^{\circ} 28' 43.23''$.

Fike's Mountain (North Brow).

A small monument on the north brow of Fike's Mountain, 1041.56 feet northward from Monument No. 24. It is $2\frac{1}{2}$ miles northeast of Cranesville and $\frac{1}{2}$ mile northeast of county road, which crosses Fike's Mountain $\frac{3}{4}$ mile west of this point.

Monument No. 25.

On a timbered flat ridge north of White Rock Run near southeast corner of John A. Reckard's land and $\frac{1}{2}$ mile south of his house. It is in the woods 100 yards from private road from the Cranesville road to Reckard's house.

Latitude $39^{\circ} 36' 06.30''$. Longitude $79^{\circ} 28' 42.51''$.

Reckard Road.

A small monument 30 feet south of a second class road through the woods near house of John A. Reckard about 6 miles west of Friendsville, Maryland.

30

Herbert Friend's Ridge.

A small monument on summit of flat ridge partly covered with timber and brush, owned by Herbert Friend, and is $\frac{1}{2}$ mile southeast of his house. It is 6 miles southwest of Friendsville.

Monument No. 26.

On north side of county road from Keeler Glade to Friendsville and is 5 miles southwest of latter place. It is on land of Sherman Friend, about 100 yards northeast of his house.

Latitude $39^{\circ} 37' 47.35''$. Longitude $79^{\circ} 28' 41.57''$.

Sherman Friend's Hill.

A small monument on summit of a flat cleared hill, owned by Sherman Friend, who lives 300 yards to southwest. It is 5 miles southwest of Friendsville, Maryland.

Melville Friend's Hill.

A small monument on summit of flat cleared hill owned by Melville G. Friend, who lives $5\frac{1}{2}$ miles west of Friendsville, Maryland, and 300 yards west of monument. A road crosses the hill 200 yards west of monument, and another is at foot of hill 300 yards to north of it.

Monument No. 27.

On north side of county road near Mrs. Marshall Friend's house, about 5 miles west of Friendsville, Maryland. It is on south edge of a cleared field bordering the county road and is on south property line of Mrs. Marshall Friend. It is in the Henry Deal surveys. The monument stands diagonally as boundary line has offset to east.

Latitude $39^{\circ} 38' 32.37''$. Longitude $79^{\circ} 28' 41.16''$.

31

Monument No. 28.

This monument is 347.3 feet eastward from Monument No. 27, and the same description applies to it. It also stands diagonally as boundary line here turns northward.

Latitude $39^{\circ} 38' 32.40''$. Longitude $79^{\circ} 28' 36.72''$.

Monument No. 29.

Is north of a wagon road through land of Jere Teets, and is about $\frac{1}{2}$ mile southeast of his house, and 5 miles west of Friendsville, Maryland.

Latitude $39^{\circ} 38' 58.92''$. Longitude $79^{\circ} 28' 36.92''$.

Jere Teets' Ridge.

A small monument on a flat cultivated ridge sloping to the east, owned by Jere Teets, and is 150 yards east of his house, which is 5 miles west of Friendsville, Maryland. It is a few feet north of an east-west private road.

L. Dedrick's Ridge.

A small monument on a flat, cleared ridge, owned by L. Dedrick. It can be reached from county road on the west by leaving that road near Chestnut Avenue Church and going eastward past house of Joshua Fike

Monument No. 30.

On summit of Evans Hill, 1 mile west of Fearer Postoffice, Maryland, and 150 yards south of the county road from Fearer to Chestnut Avenue Church. The monument is on cultivated land owned
32 by Hosea Thomas, who lives 200 yards to the west.
Latitude 39° 40' 15.92". Longitude 79° 28' 37.50".

Monument No. 31.

On north side of county road from Friendsville, Md., to Hazelton, West Va., and is 1 mile west of Fearer, Md. It is 100 yards west of house of A. J. Thomas and on line dividing his property from that of Hosea Thomas.

Latitude 39° 40' 26.10". Longitude 79° 28' 37.58".

Monument No. 32.

Is $\frac{1}{2}$ mile southeast of house of Geo. W. Vansickle and is nearly the same distance southwest of W. M. Fike's house, and about 5 miles west of Selbysport, Maryland. The monument stands in place of a large Spanish Oak tree, which was removed during the survey in 1911. This tree was corner of property of John Vansickle, George W. Vansickle, on the west, and in a line of W. Marshall Fike on the east. The land is cleared and the boundary line makes a slight deflection angle to the east. The monument is marked "Span Oak" in addition to other inscriptions.

Latitude 39° 41' 14.28". Longitude 79° 28' 37.94".

F. T. Fike's Ridge.

A small monument in a field owned by F. T. Fike 200 yards east of a road leading from George Vansickle's place to Selbysport, Maryland.

Monument No. 33.

On north side of county road leading towards Selbysport, Maryland, and is about 5 miles west of that place. It is on line
33 between cleared land owned by James McDermott and Isaiah Umble.

Latitude 39° 42' 06.58". Longitude 79° 28' 37.84".

Thomas' Ridge.

A small monument on cleared flat ridge owned by M. M. Thomas on the west and by Joseph Thomas on the east. It is 300 yards northwest of house of Joseph Thomas and $\frac{1}{2}$ mile south of Pennsylvania State Line.

Monument No. 34.

At the intersection of the Md.-W. Va. boundary line from the south with the Pennsylvania state line. It is 2 miles southwest of Markleysburg, Pennsylvania, $\frac{1}{4}$ mile east of point where the pike to that place crosses the Penna. line, and $\frac{1}{4}$ mile northeast of house of M. H. Thomas. It is 1051 feet westward from the Mason & Dixon mound in which a stone monument marked, "55.2 M 1885," was set by survey made in 1885 by the states of Pennsylvania and West Virginia.

Monument 34 is 40 feet south of oil pipe line, which runs through Pennsylvania near its southern boundary, and is $\frac{1}{4}$ mile west of a metal gate house of this pipe line. It is in the straight line between Monuments of 1885 numbered 55.2 M and 54.2 M; the latter being 4276 feet to the westward and in center of a Mason & Dixon mound. The land south of Monument No. 34 is owned by M. M. Thomas. The monument sets square and is marked the same as others, excepting that on the north face are the letters PA above the date 1910.

Latitude $39^{\circ} 43' 15.88''$. Longitude $79^{\circ} 28' 37.72''$.

34

TABLE NO. 1.

Horizontal Distances from Monument No. 1—Distances between Monuments—True Bearings—Magnetic Bearings and Approximate Elevations Above Mean Sea Level.

Monument name or number.	Horizontal distances from mon. No. 1.	Distances between monu- ments.	True bearings.	Magnetic bearings October 1, 1910.	Approximate elevation above mean sea level.
	(Feet.)	(Feet.)	° ' "	° '	
Fairfax	3989.13				3162 ft.
1	0000.00	3989.13	S. 0 56 00 W.		2721 "
2	1208.55	1208.55	N. 0 56 00 E.		2894 "
Arnolds Ridge.	1976.49	767.94	N. 0 47 53 E.	N. 4 40 E.	3103 "
3	11242.12	9265.63	"	"	3343 "
Stahlnaker Ridge..	17906.38	6664.26	"	"	2778 "
4	21494.14	3587.76	"	"	2480 "
5	21896.29	402.15	N. 71 48 00 W.		2536 "
6	25551.94	3655.65	N. 0 27 04 E.	N. 4 19 E.	2523 "
Hamsteads Hill ...	29604.88	4052.94	"	"	2575 "
7	33215.31	3610.43	"	"	2512 "
8	33802.71	587.40	"	"	2535 "
Silas Fike Bolt in rock	35174.15	1371.44	N. 0 42 57 E.	N. 4 38 E.	2568 "
Dawson's Hill.	37824.24	2650.09	"	"	2548 "
9	41393.05	3568.81	"	"	2441 "
		1391.72	"	"	

Table No. 1—Continued.

Monument name or number.	Horizontal distances from mon. No. 1.	Distances between monu- ments.	True bearings.	Magnetic bearings October 1, 1910.	Approximate elevation above mean sealevel.
Offuts Hill	42784.77				2558 ft.
Stahl's Hill	48065.58	5280.81	N. 0 42 57 E.	N. 4 38 E.	2707 "
10	50686.81	2621.23	"	"	2464 "
11	51169.11	482.30	S. 89 17 03 E.		2444 "
12	53672.78	2503.67	N. 0 41 02 E.	N. 4 42 E.	2420 "
Ashby's Hill	54860.88	1188.10	"	"	2617 "
Lauer Hill Bolt in rock.....	58182.08	3321.20	"	"	2807 "
35 13	59569.07	1386.99	N. 0 41 02 E.	N. 4 42 E.	2857 feet
Miller	67074.89	7505.82	"	"	2619 "
Poling	70117.80	3042.91	"	"	2634 "
White	75391.99	5274.19	"	"	2433 "
14	78439.22	3047.23	"	"	2470 "
Morris-Connell	80845.03	2405.81	"	"	2548 "
15	84381.27	3536.24	"	"	2587 "
Severe	89255.10	4873.83	N. 0 22 27 E.	N. 4 34 E.	2530 "
Browning	90968.56	1713.46	"	"	2622 "
Burchinal road....	98249.21	7280.65	"	"	2799 "
16	102635.31	4386.10	"	"	3020 "
17	106937.44	4302.13	"	"	3072 "
Teet's Road.....	116913.62	9976.18	"	"	2572 "
18	117867.00	953.38	"	"	2572 "
19	119430.97	1563.97	"	"	2572 "
20	120402.06	971.09	N. 89 27 27 E.		2572 "
21	127955.42	7553.36	N. 0 17 00 E.	N. 4 29 E.	2575 "
22	128009.11	53.69	S. 89 43 00 E.		2575 "
23	129450.93	1441.82	N. 0 24 42 E.	N. 4 48 E.	2630 "
Elsey's Hill.....	130664.63	1213.70	"	"	2788 "
Strawser Road....	133361.59	2696.96	"	"	2494 "
		3868.96	"	"	

Table No. 1—Continued.

Monument name or number.	Horizontal distances from mon. No. 1.	Distances between monu- ments.	True bearings.	Magnetic bearings October 1, 1910.	Approximate elevation above mean sea level.
Fike's Hill—South brow	137230.55				2862 feet
24	138181.57	951.02	N. 0 24 42 E.	N. 4 48 E.	2867 "
Fike's Hill—North brow	139223.13	1041.56	"	"	2843 "
25	145983.20	6760.07	"	"	2582 "
36		4621.04	"	"	
Near Reckart road.	150604.24				2344 "
H. Friend	153138.74	2534.50	N. 0 24 42 E.	N. 4 48 E.	2379 "
26	156208.90	3070.16	"	"	2260 "
Friends Hill	156777.81	568.91	"	"	2331 "
M. O. Friend.....	159773.78	2995.97	"	"	2299 "
27	160764.91	991.13	"	"	2229 "
28	161112.22	347.31	N. 89 25 12 E.		2221 "
29	163795.03	2682.81	N. 0 20 07 W.	N. 4 10 E.	2193 "
Jer. Teets.....	165288.07	1493.04	"	"	2282 "
L. Dedrick.....	167699.73	2411.66	"	"	2331 "
30	171587.22	3887.49	"	"	2399 "
31	172618.44	1031.22	"	"	2344 "
32	177493.39	4874.95	"	"	2337 "
F. T. Fike	180564.36	3070.97	N. 0 04 55 E.	N. 4 38 E.	2337 "
33	182785.95	2221.59	"	"	2289 "
Thomas.....	187335.08	4549.13	"	"	2301 "
34	189798.97	2463.89	"	"	2321 "

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TABLE NO. 2.

Magnetic Bearings Between Monuments on the Maryland-West Virginia Boundary Line from the Potomac River to the Pennsylvania Line, for October, 1910.

NOTE.—The original observations were reduced at the office of the Coast and Geodetic Survey, Washington, D. C., by courtesy of the Superintendent of that Bureau.

Monuments Nos.	True bearing.	Magnetic bearing.	Magnetic declination.	Number of observa- tions.
2-4	N. 0° 47' 53'' E.	N. 4° 40' E.	3° 52' W.	20
5-7	N. 0° 27' 04'' E.	N. 4° 19' E.	3° 52' W.	7
8-10	N. 0° 42' 57'' E.	N. 4° 38' E.	3° 55' W.	8
11-15	N. 0° 41' 02'' E.	N. 4° 42' E.	4° 01' W.	6
15-18	N. 0° 22' 27'' E.	N. 4° 34' E.	4° 12' W.	13
20-21	N. 0° 17' 00'' E.	N. 4° 29' E.	4° 12' W.	2
23-27	N. 0° 24' 42'' E.	N. 4° 48' E.	4° 23' W.	5
28-32	N. 0° 20' 07'' W.	N. 4° 10' E.	4° 30' W.	5
32-34	N. 0° 04' 55'' E.	N. 4° 38' E.	4° 33' W.	3

If values for shorter intervals are desired, it will probably be best to obtain them by interpolating the declination. The value for the line between Nos. 20 and 21 is probably less reliable than the others, as it depends upon only two results which differ by 10'.

38 We return herewith a financial statement showing in detail the money actually expended by the Commissioners for surveying and marking the boundary line under the decree in this case, including the per diem compensation of all the Commissioners. We also return herewith the several exceptions made and filed before the Commissioners by Mr. W. McCulloh Brown, one of the Commissioners, during the progress of the work, together with such explanations, observations and notes as we have thought proper to make concerning said exceptions for the information of the court.

We also return herewith a number of photographs taken upon the ground illustrating the monuments erected by us to mark the line as run by us, showing the character of the work, method of construction and location of such monuments.

Respectfully submitted,

JULIUS K. MONROE,
SAMUEL S. GANNETT,

Commissioners.

October 31, 1911.

39 *Financial Statement in Detail of Money Actually Expended
for Surveying and Marking the Maryland-West Virginia
Boundary Line July 11, 1910, to October 31, 1911.*

July 11-23, 1910, Inclusive.

VOUCHER No. 1.

Julius K. Monroe,	15 days.....	\$225.00
W. McCulloh Brown,	15 ".....	225.00
S. S. Gannett,	14 ".....	210.00
George McKenzie,	13 ".....	26.00
C. Lee Packard,	11 ".....	22.00
M. F. Gannett,	11 ".....	22.00
T. Brooke Price,	11 ".....	22.00
Wm. H. Kitzmiller,	12 ".....	24.00
C. Milton Sincell,	11 ".....	22.00
Geo. L. Wotring,	11 ".....	22.00
Robert C. Manear,	11 ".....	22.00
Czar Herring,	11 ".....	22.00
Oscar Ridder,	5½ ".....	11.00
D. E. Offut & Son, Groceries as per bills.....		46.31
Layton, Schaffer Co., Groceries as per bill....		2.30
W. C. Mosser, Groceries as per bill.....		13.80
Buxton & Landstreet Co., Groceries as per bill.		29.18
Julius K. Monroe, Expenses as Commissioner..		27.40
W. McCulloh Brown, Expenses as Commis- sioner		20.97
S. S. Gannett, Expenses as Commissioner.....		8.70
		<hr/> \$1023.66

July 24-August 6, Inclusive.

VOUCHER No. 2.

Julius K. Monroe,	14 days.....	210.00
W. McCulloh Brown,	14 ".....	210.00
S. S. Gannett,	14 ".....	210.00
George McKenzie,	14 ".....	28.00
Chas. Lee Packard,	11½ ".....	23.00
M. F. Gannett,	12 ".....	24.00
T. Brooke Price,	12 ".....	24.00
Wm. H. Kitzmiller,	12 ".....	24.00
C. Milton Sincell,	11½ ".....	23.00
Geo. L. Wotring,	11 ".....	22.00
Robert C. Manear,	12 ".....	24.00
Czar Herring,	11 ".....	22.00
Oscar Ridder,	8 ".....	16.00
John W. Biggs,	12 ".....	24.00

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Expense Sheet # 2.

VOUCHER No. 2—Cont'd.

G. C. McAvoy, 4 days.....	\$80.00	
Somers Mosser, 54 meals for men.....	9.50	
Daniel Gnegy, 8 meals for men.....	2.00	
The Buxton & Landstreet Co., Provisions as bills rend.	64.09	
The Siever Hardware Co., Gasoline & two cans.	3.05	
Wm. A. Liller, 100 sacks sand, \$24.00		
100 " " 10.00		
		<hr/> \$1004.64

August 7-20, 1910, Inclusive.

VOUCHER No. 3.

S. S. Gannett, Commissioner, 14 days.....	\$210.00	
W. McCulloh Brown, " 14 "	210.00	
Julius K. Monroe, " 14 "	210.00	
George McKenzie, Cook, 5½ "	11.00	
Chas. Lee Packard, 10½ "	21.00	
M. F. Gannett, 11 "	22.00	
T. Brooke Price, 11 "	22.00	
Wm. H. Kitzmiller, 10½ "	21.00	
C. Milton Sincell, 11 "	22.00	
Geo. L. Wotring, 10½ "	21.00	
Robt. C. Manear, 11½ "	23.00	
C. C. Herring, 12 "	24.00	
Oscar Ridder, (1.75 horse) 10½ "	22.75	
John W. Biggs, 11½ "	23.00	
G. C. McAvoy, 11½ "	23.00	
Buxton & Landstreet Co., Groceries.....	19.54	
Alpha Supply Co., Cement.....	31.31	
Scherr Brothers, Groceries.....	7.83	
Eli Mosser, Butter, Milk, Meat, Potatoes, etc., Wood, Work, Hauling, moving camp—July 12th to August 12th.....	102.90	
		<hr/> 1047.33

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Expense Sheet # 3.

August 21-Sept. 3, 1910, Inclusive.

VOUCHER No. 4.

Samuel S. Gannett, Commissioner.....	\$210.00
W. McCulloh Brown, ".....	210.00
Julius K. Monroe, ".....	210.00
George McKenzie, Cook, 13 days.....	26.00
Chas. L. Packard, Rod, 10 ".....	20.00
M. F. Gannett, Rod, 9 ".....	18.00
W. H. Kitzmiller, Ax, 9½ ".....	19.00
Geo. L. Wotring, Ax, 10 ".....	20.00
Robt. C. Manear, Rod, 8 ".....	16.00
C. C. Herring, Chain, 8¾ ".....	17.50
Oscar Ridder, Ax, (Horse \$2.75) 8 days.....	18.75
John W. Biggs, Ax, 9½ ".....	19.00
G. C. McAvoy, Ax, 10½ ".....	21.00
Daniel Gnegy, 28 meals for men, 25¢.....	7.00
William Bowman, 4 bu. Oats, 50¢.....	2.00
White Rock Sand Co., 2 loads sand for monuments.....	3.25
Scherr Bros., Provisions, etc.....	20.19
Silas R. Fike, Provisions—Hauling sand—moving camp, etc., Aug. 12th to Sept. 5th, '10.....	62.15

 \$919.84

Sept. 4-17, 1910, Inclusive.

VOUCHER No. 5.

Samuel S. Gannett, Commissioner.....	210.00
W. McCulloh Brown, ".....	210.00
Julius K. Monroe, ".....	210.00
George McKenzie, Cook, 13 days.....	26.00
Chas. L. Packard, Chain, ½ ".....	1.00
M. F. Gannett, Chain, 7½ ".....	15.00
W. H. Kitzmiller, Ax, 8½ ".....	17.00
Geo. L. Wotring, Ax, 8 ".....	16.00
Robt. C. Manear, Chain, 6½ ".....	13.00
C. C. Herring, 10⅝ ".....	21.25
Oscar Ridder, Ax, 10½ & horse.....	24.25
John W. Biggs, Ax, 8½ days.....	17.00
G. C. McAvoy, Ax, 9½ ".....	19.00
Dixon & Kelso, 15 bbls. Cement at \$1.40, 21.00; 60 bags at 7½¢, 4.50.....	25.50

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Expense Sheet # 4.

VOUCHER No. 5—Cont'd.

Markwood & Co., Provisions, Sept. 7th.....	5.94
Mrs. J. G. Brenninger, 22 lb. Butter.....	6.40
P. P. Gortner, Provisions, Sept. 9-13-20.....	57.00
George Gauer, Timber Cut.....	9.05
Dennis Biser, " "	1.42
Wm. Weimer, " "	1.07
H. H. Beckman, " "	7.84
Lloyd Dawson, " "	6.27

 \$919.99

Sept. 18-Oct. 1, 1910, Inclusive.

VOUCHER No. 6.

Samuel S. Gannett, Commissioner.....	210.00
W. McCulloh Brown, "	210.00
Julius K. Monroe, "	210.00
George McKenzie, cook, 12 days.....	24.00
M. F. Gannett, Chain, 13 "	26.00
W. H. Kitzmiller, Ax, 12 "	24.00
Geo. L. Wotring, Ax, 12 "	24.00
Robt. C. Manear, Rod, 11 "	22.00
C. C. Herring, Rod, 10½ "	21.00
Oscar Ridder, Ax, (Horse \$2.60) 12 days....	26.60
John W. Biggs, Ax, 10 "	20.00
G. C. McAvoy, Ax, 10 "	20.00
Mrs. Chas. Fulk, (Use of W. McCulloh Brown), Provisions	11.65
Fike Brothers, Hauling Cement & Sand, Mov- ing Camp	27.00
E. Baumgardner, (Use Julius K. Monroe), Provisions	1.25
W. D. Dixon, (Use Julius K. Monroe), Pro- visions	2.10
D. E. Offutt, Provisions.....	16.84

 896.44

Expense Sheet # 5.

October 2-15, 1910, Inclusive.

VOUCHER No. 7.

Samuel S. Gannett, Commissioner.....	210.00
W. McCulloh Brown, "	210.00
Julius K. Monroe, "	210.00
George McKenzie, Cook, 14 days.....	28.00
M. F. Gannett, Chain, 11½ "	23.00
W. H. Kitzmiller, Ax, 10½ "	21.00
Geo. L. Wotring, Ax, 10½ "	21.00
Robt. C. Manear, Rod, 10 "	20.00
C. C. Herring, Chain, 10½ "	21.00
Oscar Ridder, Ax, & Horse \$2.80, 11 days....	24.80
John W. Biggs, Ax, 10½ "	21.00
G. C. McAvoy, Ax, 8 days.....	16.00
Shaffer's Cash Store, 1 bu. Potatoes.....	.65
Ernest Ashby, Team moving Camp.....	4.00
Alpha Supply Co., 50 bags Cement.....	15.62
B. & O. Ry. (Use J. K. Monroe) Freight on Cement	1.52
B. & O. Ry. (Use J. K. Monroe).....	2.00
Wm. Ashby, Milk, provisions, feed for horse, and team in moving camp.....	26.48
J. D. Browning, Groceries, Team in moving Camp (\$4.00)	31.30

\$907.37

October 16-31, 1910, Inclusive.

VOUCHER No. 8.

Samuel S. Gannett, Commissioner.....	240.00
W. McCulloh Brown, "	240.00
Julius K. Monroe, "	240.00
George McKenzie, Cook, 14 days.....	28.00
M. F. Gannett, Chain, 6½ "	13.00
W. H. Kitzmiller, Ax, 10½ "	21.00
Geo. L. Wotring, Ax, (Board \$2.00) 4 days..	10.00
Robt. C. Manear, Chain, 11 days.....	22.00
C. C. Herring, Ax, 11 "	22.00
Oscar Ridder, Ax, (Care horse 2.20), 10½ days	23.20
John W. Biggs, Ax, 10½ days.....	21.00
G. C. McAvoy, Ax, 12½ "	25.00

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Expense Sheet No. 6.

VOUCHER No. 8—Cont'd.

Orval Friend, Provisions, Hauling sand and Cement; moving camp.....	\$30.99	
S. G. Wilson, Provisions.....	1.63	
J. D. Browning, Provisions, Hauling sand and Cement, moving Camp, etc.....	58.32	
W. H. Lewis, Provisions.....	30.22	
	<hr/>	\$1026.36

November 1-15, 1910, Inclusive.

VOUCHER No. 9.

Julius K. Monroe, Commissioner.....	180.00	
W. McCulloh Brown, ".....	180.00	
Samuel S. Gannett, ".....	225.00	
Geo. McKenzie, Cook, 12 days.....	24.00	
William H. Kitzmiller, Ax, 5 ".....	10.00	
Robt. C. Manear, Flag, 5 ".....	10.00	
C. C. Herring, Ax, 5 ".....	10.00	
Oscar Ridder, Ax, (Horse \$3.00) 4 days....	11.00	
John W. Biggs, Ax, 5 days.....	10.00	
G. C. McAvoy, Ax, 11 ".....	22.00	
Alpha Supply Co., 50 bags cement (Cotton) ..	15.63	
J. D. Browning, Provisions, Moving Camp, etc.	64.96	
	<hr/>	762.59

November 16-December 6, 1910, Inclusive.

VOUCHER No. 10.

Julius K. Monroe, Commissioner.....	315.00
W. McCulloh Brown, ".....	315.00
Samuel S. Gannett, ".....	300.00
George McKenzie, Cook, 10.5 days.....	21.00
W. H. Kitzmiller, Ax, 18.0 ".....	36.00
Robt. C. Manear, Rod, 17.0 ".....	34.00
C. C. Herring, Chain, (Horse \$1.67) 16.0 days	33.67

45

Expense Sheet # 7.

VOUCHER No. 10—Cont'd.

Oscar Ridder, Ax, (Horse \$2) (\$2.00 of Riders to Use of W. McBrown), 9.0 days.....	20.00	
John W. Biggs, Ax, 16.0 days.....	32.00	
G. C. McAvoy, Ax, 18.0 ".....	36.00	
James Conneway, Ax, (Use W. McB.) 6.0 days.....	12.00	
Calvin Frazee, Cook, 7.0 days.....	14.00	
J. D. Browning, Provisions, hauling, freight, etc.	99.93	
Samuel A. Strawser, Butter, etc.....	10.69	
W. McBrown, Rent of 5 tents, 7 cots, brush hook, Ax, Oven.....	45.90	
S. C. Mosser, Hauling sand and materials, moving, & board men.....	21.00	
Clyde H. Falkenstine, Provisions, horse feed, etc.	29.56	
S. S. Gannett, Railroad fare, express & transfer instruments, Cranesville-Washington, D. C.	11.95	
Oscar Ridder (Use J. K. M.), Provisions.....	.75	
D. E. Offutt & Sons, Provisions, Aug. 11-Oct. 1.....	104.69	
	<hr/>	\$1493.14

July 11-31, 1911, Inclusive.

VOUCHER No. 11.

Julius K. Monroe, Commissioner.....	315.00
W. McCulloh Brown, ".....	315.00
Samuel S. Gannett, ".....	315.00
John W. Biggs, Axman, 16 days.....	32.00
C. C. Herring, Chain, (Horse \$5.25) 18 days..	41.25
Robert C. Manear, Chain, 18 days.....	36.00
James Conneway, Ax, 18 ".....	36.00
Robert Gannett, Flag, 18 days, at \$1.50 per d'y	27.00
Calvin Frazee, Axe, 17 days.....	34.00
Hiram A. Reckart, Ax, 12 ".....	24.00
Eva Frazee, Cook, 19 days, at \$40 per month..	25.33
Mrs. Ettie McGettigan, Wood & ground rent..	10.00

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Expense Sheet # 8.

VOUCHER No. 11—Cont'd.

Wm. S. Downs, Template and lettering (Monuments)	66.00	
The Argus Printing House, Printing.....	4.00	
T. B. Hinebaugh, Provisions.....	2.00	
Eli Mosser, Hauling sand & Cement.....	4.00	
Clyde Falkenstine, Provisions & Hauling.....	17.14	
Charles Falkenstine, Team moving camp.....	4.00	
Samuel Strawser, Provisions.....	13.65	
Sherman Friend, Provisions and hauling.....	13.28	
Fred Falkner, Provisions and hauling.....	10.00	
S. S. Gannett, Expense, Washington to Cranesville	13.75	
W. McCulloh Brown, Expense, Bayard to Cranesville	3.00	
Peter F. Nine, Hauling Sand.....	12.00	
Geo. W. Vansickle, Oats and stable rent.....	1.25	
Alpha Supply Co., 50 bags cement.....	15.63	
Julius K. Monroe, Expense, Kingwood to Cranesville	5.50	
Julius K. Monroe, Stamps, Lamps and Car-bide	2.16	
Julius K. Monroe, Sunds, (V. No. —).....	7.97	
A. J. Thomas, Use J. K. Monroe, Timber Cut	8.00	
F. G. Fox, Use J. K. Monroe, Merchandise...	.75	
R. M. Hohman, Use J. K. Monroe, Ax.....	.85	
Geo. W. Myers, Use J. K. Monroe, Repairing Wagon	2.00	
W. M. Fike, Provisions, Use J. K. Monroe...	1.05	
Martin Falkner, Use J. K. Monroe, Cutting Timber75	
E. W. Shroyer, Use J. K. Monroe, 2 Bu. Oats.	1.00	
		\$1360.31

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Expense Sheet No. 9.

August 1-15, 1911, Inclusive.

VOUCHER No. 12.

Julius K. Monroe, Commissioner.....	225.00
W. McCulloh Brown, "	225.00
Samuel S. Gannett, "	225.00
John W. Biggs, Axman, 2 days.....	4.00
C. C. Herring, Chain, 13 "	26.00

C. C. Herring, Care of horse, 15 d'y, at 25¢...	3.75
Robert C. Manear, Flag, 13 days.....	26.00
James Conneway, Ax, 13 ".....	26.00
Robert Gannett, Flag, 13 days, at \$1.50 a day.	19.50
Calvin Frazee, Ax, 13 days.....	26.00
Hiram A. Reckart, Ax, 13 ".....	26.00
Oscar S. Ridder, Ax, 2 ".....	4.00
Eva Frazee, Cook, 15 days, at \$40.00 per month.....	20.00
R. K. Maroney, Livery Team.....	5.00
Maroney Bros., Livery teams.....	9.00
T. B. Hinebaugh, Provisions.....	2.95
Frank Fike, Provisions.....	2.80
H. L. Wolf, Provisions.....	8.95
C. T. Vansickle, Hauling cement & Provisions	13.00
W. M. Fike, Use Julius K. Monroe, Provisions	1.40
W. F. Holman, Use J. K. Monroe, Repairing Wagon.....	.75
W. M. Brown, Use J. K. Monroe, Provisions..	.40

\$900.

August 16-31, 1911, Inclusive.

VOUCHER No. 13.

Julius K. Monroe, Commissioner.....	240.00
W. McCulloh Brown, ".....	240.00
Samuel S. Gannett, ".....	240.00
C. C. Herring, 14 days.....	28.00
C. C. Herring, care of horse 16 days at 20 cents a day.....	3.20
Robt. C. Manear, 14 days.....	28.00
James Conneway, 14 ".....	28.00
Robert Gannett, 14 days, at \$1.50 a day.....	21.00
Calvin Frazee, 14 days.....	28.00

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Expense Sheet # 10.

VOUCHER No. 13—Cont'd.

Hiram A. Reckart, 14 days.....	28.00
Oscar S. Ridder, 14 ".....	28.00
Eva Frazee, Cook, 16 days, at \$1.33 per day...	21.33
J. H. Lee, Use J. K. Monroe, Merchandise....	1.30
Isaiah Umble, Mutton.....	7.80
L. E. Friend, 25 bbls. Portland Cement at \$2.25.....	56.25
C. W. Friend, Use J. K. Monroe, Merchandise.	1.02
H. L. Wolf, Use J. K. Monroe, Merchandise..	7.47
T. B. Hinebaugh, Merchandise.....	1.35

J. D. Browning, Provisions & Freight.....	116.47	
Geo. W. Vansickle, Provisions, Hauling, etc..	123.30	
G. W. Myers, Use J. K. Monroe, Repairing...	.90	
M. M. Thomas, Locust timber cut, etc.....	5.00	
W. M. Fike, 10 locust trees cut, at 50¢.....	5.00	
Frank T. Fike, 5 Locust Trees cut.....	3.00	
John Vansickle, 2 small locusts cut.....	1.00	
Mrs. Ella Friend, Timber Cut.....	2.70	
		<hr/>
		\$1266.09

Sept. 1-Sept. 17, 1911, Inclusive.

VOUCHER No. 14.

Julius K. Monroe, Commissioner.....	255.00
W. McCulloh Brown, ".....	255.00
Samuel S. Gannett, ".....	255.00
C. C. Herring, 14 days.....	28.00
C. C. Herring, care of horse.....	3.20
Robt. C. Manear, 14 days.....	28.00
James Conneway, 14 ".....	28.60
Robert Gannett, 9 days, at \$1.50 a day.....	13.50
Calvin Frazee, 14 days.....	28.00
Oscar Ridder 15 ".....	30.00

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Expense Sheet # 11.

VOUCHER No. 14—Cont'd.

Hiram A. Reekart, 14 days.....	28.00
Eva Frazee, Cook, 16 days, at \$40 a month...	21.28
S. S. Gannett, Express on instruments.....	2.05
W. McCulloh Brown, Expense, Cranesville to Kingwood.....	5.94
Eli G. Albright, Timber cut, etc.....	5.00
Alfred G. Friend, Provisions & Hauling.....	9.12
E. F. Jenkins, Provisions.....	32.39
J. D. Browning, Hauling sand & cement & moving.....	89.50
J. D. Browning, 67 meals for Commissioners & men.....	16.75
J. D. Browning, Provisions.....	54.31
R. M. Holman, Bal. on wagon repairs.....	3.00
Ray Ringer, Moving camp & hauling sand...	10.00
T. J. Shroyer, 24# Mutton saddle at 10¢.....	2.40
Clifford Friend, Hauling & Provisions.....	4.55
Sherman Friend, Provisions, Hauling & timber cut.....	30.38
Melville G. Friend, Hauling & Timber cut....	9.75
	<hr/>

\$1248.12

Sept. 18-30, 1911, Inclusive.

VOUCHER No. 15.

Julius K. Monroe, Commissioner.....	195.00
W. McCulloh Brown, ".....	195.00
Samuel S. Gannett, ".....	195.00
Mae V. Brennan, (Raleigh Hotel) 23½ days board for Commissioners, at \$1.50 a day....	35.25
Preston Republican, Printing vouchers & sale bills	9.00
Hosea Thomas, Timber cut & destroyed.....	15.00
Ross Frazee, Timber cut & destroyed.....	5.00
T. B. Hinebaugh, Timber cut & destroyed....	5.00
Leanous Dedrick, Timber cut & destroyed....	3.00

\$657.25

50

VOUCHER # 16.

Oct. 1-21, 1911, Inclusive.

Julius K. Monroe, Commissioner.....	315.00
W. McCulloh Brown, ".....	315.00
Samuel S. Gannett, ".....	315.00
Mrs. Mae V. Brennan, 18½ days' board for Commissioners, at \$1.50.....	27.75
W. R. Lenhart, Stenographer.....	2.58
Keystone Blue Paper Co., Printing Maps, 1 negative, 10 black line prints, 1 blue print..	44.37
M. H. Frankhouser, Provisions & Hauling...	5.70
H. W. Ringer, Livery to Kingwood.....	4.00
Calvin Frazee, 1½ ds cleaning & packing cement bags & cord.....	3.20
J. B. Hogg, by J. H. Henderson, Draftsman, making original tracing, and finishing map.	68.60

\$1101.20

VOUCHER No. 17.

Oct. 22-31, 1911, Inclusive.

Julius K. Monroe, Commissioner.....	150.00
W. McCulloh Brown, ".....	150.00
Samuel S. Gannett, ".....	150.00
Mrs. Mae V. Brennan, Board for Commis- sioners	15.00
Samuel S. Gannett, Expenses from Kingwood, W. Va., to Washington, D. C., via Fairfax..	14.00
Julius K. Monroe, Expenses Kingwood, W. Va., to Washington, D. C., via Fairfax and return	22.00

Board at Washington, D. C.....	20.00	
Stenographer at Washington, D. C. (estimated)	25.00	
S. H. Garner, Use J. K. Monroe, Photographs of Monuments	5.00	
Foster Zeigler, Stenographer, Kingwood.....	20.00	
W. McCulloh Brown, Board at Oakland.....	12.00	
Stenographer at Oakland.....	15.00	
Expenses Oakland to Baltimore, Washington..	9.00	
Keuffel & Esser Co., Use J. K. Monroe, Tracing Cloth & Express.....	8.77	
J. D. Browning, Livery.....	4.00	
		\$619.77
Grand Total.....		\$17,154.60

51 Of this total expenditure of Seventeen thousand one hundred and fifty-four dollars and sixty cents (\$17,154.60), the State of Maryland should be credited as having paid \$5038.49, and the State of West Virginia as having paid \$12,116.11

52 *Exceptions Made by Commissioner W. McCulloh Brown to the Maryland-West Virginia Boundary Line as Surveyed and Marked in 1910 and 1911.*

With reference to the several exceptions and objections made by Commissioner W. McCulloh Brown, during the progress of the locating and marking of the line in this cause under the decree entered on the 31st day of May, 1910, the following observations may properly be made:

Three different lines were under consideration, the question being which of those lines should be adopted as the true division line between the States of Maryland and West Virginia, as constituting the Western boundary of the State of Maryland. These lines were the Deakins, or old State line; the Michler line run by Lieutenant Michler in 1859, and the Brown-Potomac line run for the first time by Mr. W. McCulloh Brown, Surveyor of the State of Maryland, during the progress of the survey under the order of the Court in this cause. A large amount of evidence was taken as to each of these lines, and evidence was offered showing their location, and they were all laid down upon the maps prepared and filed in the cause. The Court adopted the Deakins, or old State line, as the true boundary line, and the present Commission was appointed "to run, locate, establish and permanently mark with suitable monuments, the said Deakins, or old State line, as the boundary line between the States of Maryland and West Virginia from said point on the Southern bank of the North Branch of the Potomac River to the said Pennsylvania line, in accordance with the opinion of this Court heretofore filed in this case, and with this decree; said line to be run and located, as

53 far as practicable, as it has been generally recognized and adopted by the people residing about or near the same, as the boundary line between said States, and not as conforming, except to a limited extent, to the Western boundary of the Maryland Military lots, as said lots are now located and held."

And the decree further provided:

"That said Commissioners may arrange for their organization, their meetings and the particular manner of the performance of their duties, and are authorized to adopt all ordinary and legitimate methods in the ascertainment of the true location of said boundary line, including the taking of evidence under oath, and calling for papers and documents, but in the event evidence is taken, the parties shall be notified and permitted to be present and cross-examine the witnesses, and all evidence taken by the Commissioners and all exceptions thereto and action thereon shall be preserved and certified and returned with their report.

Said Commissioners are also at liberty to refer to and consult the printed record in the cause, so far as they may think proper to enable them to discharge their duties under this decree."

The Court in its opinion, uses the following language:

"It may be true that an attempt to relocate the Deakins line will show that it is somewhat irregular, and not a uniform, astronomical north and south line: but both surveyors appointed by the states represented in this controversy were able to locate a number of points along the line, and the northern limit thereof is fixed by a mound, and was located by the commissioners who fixed the boundary between West Virginia and Pennsylvania by a monument which was erected at that point, and we think from the evidence in this record that it can be located with little difficulty by competent commissioners.

We think, for the reasons which we have undertaken to state, that the decree in this case should provide for the appointment of commissioners whose duty it shall be to run and permanently mark the old Deakins line, beginning at a point where the north and south line from the Fairfax Stone crosses the Potomac River, and running thence northerly along said line to the Pennsylvania border."

We conclude, therefore, that when the Court adopted the Deakins, or old State line, as the true boundary line, it adopted the line as proven to exist by the evidence, and a large number of the points in which, are located on the maps made by both surveyors, and which were shown and designated on the trial maps. And it was this line that the Commissioners were directed to locate and mark on the ground with suitable monuments. It was not expected that

54 the Commissioners would hear new evidence in the case, but they were expected to take the evidence and maps shown in the printed record, and locate the lines as located by this evidence and upon these maps. If there were any points on this line, the location of which was left in doubt, such as the points where the offsets were to be made, they were to be at liberty to proceed in the ordinary and usual manner to ascertain the location of the line at such points, and, if necessary, they were authorized to take evidence, but

as we understood, it was only in cases where they considered it necessary. If by taking the positions of the points already established in the case and by examining the ground, they were satisfied as to where the old line ran, they were not obliged to delay their work and hear witnesses. It is to be observed that the true location of this line was in controversy before the final decision in this cause, and both parties offered a large amount of evidence upon this question. A large number of grants, deeds and other conveyances were located by the surveyors of both parties, and this class of evidence was fully gone into. We do not believe, therefore, that it was proper for this Commission to hear original testimony upon these questions, or to introduce additional grants, deeds, or conveyances, but that they would be confined to having any particular object, which had been testified to, pointed out to them and located on the ground. Upon its being pointed out by any person, if the Commissioners were satisfied that it was the object called for, there was no necessity for swearing witnesses and taking testimony in a formal way. In other words, all that was necessary was for the Commissioners to be satisfied by the ordinary and usual methods as to the location of the different points on the line; and if they, or a majority of them, were

55 satisfied in any case, they were authorized to act accordingly.

This is the method that was pursued by the Commissioners, and therefore the foregoing observations apply to nearly all the exceptions made by Mr. Brown and filed before the Commission.

Several of these exceptions are to the action of the majority of the Commission in declining to consider the location of various Maryland surveys and patents, which were not introduced in evidence by the plaintiff in this cause before the Court. Among these surveys are the following: "All the Chances", mentioned in Exception No. 11; "Border Life" and "Browning's Manor", mentioned in Exceptions Nos. 16, 17, and 18, and a tract named "Home", mentioned in Exceptions Nos. 20 and 20A, and a survey named "Agathos", mentioned in Exceptions Nos. 22 and 25, and a survey named "Ligonia", mentioned in Exceptions Nos. 24 and 26, and a survey called "Canrobert", mentioned in Exceptions Nos. 29 and 34, and a survey called "Pine Swamp", mentioned in Exception No. 31, and "Tudor", mentioned in exceptions Nos. 32 and 35. If these patents are competent evidence as to the location of the boundary line, it seems to us that they should have been introduced and used at the hearing before the Court. We examined these patents, however, so far as they were presented to us, and did not see that they would aid us in running the Deakins line.

Several of the exceptions are based upon the action of the majority of the Commissioners in running the line in such way as to leave on the West Virginia side certain territory or portions of land claimed by the owners to lie in the State of Maryland, and which it is alleged in the exceptions are assessed in Maryland. This must necessarily have been the case in some instances, and it was so recognized by the Court in its opinion and decree. The Commissioners were not directed to run the line according to whether cer-

tain land owners claimed their lands were in Maryland or
56 West Virginia at the present time, or for twenty or forty
years, but they were directed to run the old Deakins line as
its location has been recognized by the inhabitants generally. In
some instances the witness recognized and pointed out the Deakins,
or old State line, but have, for a number of years, claimed that it
was not the true boundary line, and, for reasons of their own, have
had their lands transferred to Maryland. This has been particu-
larly the case since the running of the Michler line. The Court,
in its decision, notwithstanding these facts, directs that the Deakins,
or Old State line, as known and recognized by the inhabitants gen-
erally, should be adopted and located. The language of the decree
is: "Said line to be run and located, as far as practicable, as it has
been generally recognized and adopted by the people residing about
and near the same." This clearly indicates that the Commission
is not expected to attempt to run the line so as to recognize all the
conflicting claims as to the location of this old line, but they should
locate it as it was generally recognized; and the Court, near the con-
clusion of its opinion uses this further language:

"Upon the whole case, the conclusion at which we have arrived,
we believe, best meet- the facts disclosed in this record, are warranted
by the applicable principles of law and equity, and will least dis-
turb rights and titles long regarded as settled and fixed by the people
most to be affected. If this decision can possibly have a tendency
to disturb titles derived from one state or the other, by grants long
acquiesced in, giving the force and right of prescription to the
ownership in which they are held, it will no doubt be the pleasure,
as it will be the manifest duty, of the lawmaking bodies of the two
states, to confirm such private rights upon principles of justice
and right applicable to the situation."

So that we believe the Court expected the Commission to locate
this old line as it is shown by the evidence to have existed, and been
generally recognized, leaving to the legislatures of of the two States
to confirm the titles of any portions of land which fall into either

57 State, but which have been for long years held and acquiesced
in under titles of the other State. Therefore the exceptions
of Mr. Brown, seeking to make the holding of the lands under
Maryland titles, or the claim that they lie in Maryland, the sole
test of the manner in which the line should run, do not seem to us to
be well taken.

The point of numerous other exceptions by Mr. Brown is that the
Commissioners refused to take testimony as to the location of certain
objects upon the ground or of certain lines and corners. We under-
stand that he made these exceptions for the purpose of presenting his
contention to the Commissioners that every point along the line
adopted by the Commissioners should be sustained by original testi-
mony taken before them, and all points should be pointed out by
persons or witnesses on the ground, sworn by the Commissioners, and
examined as witnesses. We know no rule of surveying or law sus-
taining this contention. Our understanding is that if the surveyor
finds upon the ground the object called for, whether natural or arti-

ficial, he adopts it, and it is only when the object can not be found that it is necessary to introduce evidence of persons who knew where it stood, that the evidence of witnesses is necessary. The Commissioners being satisfied, are not obliged to delay the work taking testimony as to a point admitted by all parties, or that has been established by testimony contained in the record in this case.

One or more of Mr. Brown's exceptions relate to his demand that the Commission should hold regular meetings and enter at large upon the journal the reasons for adopting any particular point or change in the line. The question of what meetings were necessary and how the journal should be kept of the proceedings was left to the Commission by the decree. It was impracticable to hold a meeting

58 at every point and enter upon the journal at large the reasons for running the line to or through each point. Any Commissioner was allowed the right at any time to make exceptions, and file his reasons why the line ought not to be run at any particular point, and such exceptions, when filed, were always considered.

In justice to ourselves, we cannot refrain from calling particular attention to Exceptions Nos. 6, 23, and 30, which, together with all others filed during the survey, are incorporated in this report immediately following these observations. These exceptions refer to the "request that our Commission hold frequent formal meetings for the full discussion of the procedure, method, and manner of our running of the Boundary Line, so that the reasons for the same may be fully understood, and may be spread upon the minutes at the proper time;" that a "Journal" be kept; that "testimony and proof be obtained before the full Commission;" that the Commission acting "as an organic body, proceed as such, and both decide upon and execute its decisions with respect to the running of said line as such, or in accordance with the decisions of said Commission as an organic body and acting as such." The majority of your Commissioners felt that so much formality was unnecessary, and so decided. To any one at all familiar with field operations on a survey of this character it must be manifest that this was impracticable, especially so in this case, where the Commissioners were expected to, and did perform all the instrumental work in connection with the survey, which most of the time was very laborious and required the attendance of one or more of the Commissioners in the field continuously, as well as to personally supervise and assist in the construction of the monuments. The exceptions referred to, imply, whether intentionally so

59 or not, that the majority of the Commission were arbitrary, and that Commissioner Brown was not permitted to be heard.

While we do not feel, or believe that this was intended, we desire to state emphatically that the proceedings were necessarily at all times entirely open, and every opportunity afforded Mr. Brown to state his views, either in writing or verbally. Mr. Brown, himself, at the very beginning, and throughout the entire course of the survey, declined to discuss corners, or other evidence on the ground, as standing in the "Deakins, or Old State Line," for the reason, as he stated, that "no such line had ever been run or marked upon the ground."

Mr. Brown faithfully and cheerfully co-operated with the majority of the Commission, (though not always agreeing with them), throughout the entire survey, and assisted materially in the preparation of the maps and the historical and scientific matter contained in this report.

Mr. Brown also assisted in the selection of suitable sites for, and in the erection of the monuments throughout the entire line, and at no time protested against his name being placed upon them; yet, at the last moment refused to sign the map and report, which together, constitute the record of the location of these monuments and the reasons for their establishment, because, as he stated, having filed exceptions to the location of the line, he could not do so, consistently.

The exceptions filed by Mr. Brown follow in regular order, a brief note after such as deemed necessary, stating the views of the majority of the Commission.

JULIUS K. MONROE,
SAMUEL S. GANNETT,
Commissioners.

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EXCEPTION No. 1.

In Camp.

WEDNESDAY, July 20th, 1910.

Julius K. Monroe, Esq., Sec'ty Boundary Commission.

DEAR SIR: As a majority of the Commission have seen fit to refuse to take testimony at my request in relation to the location of the beginning of Military Lot 1101, I hereby make formal exception and protest to the permanent location and marking of a State boundary line to or from this point.

Yours truly,
(Signed)

W. McCULLOH BROWN,
Commissioner.

NOTE.—Mr. Brown, one of the Commissioners, stated to both the other Commissioners, that he had, many years ago, as a surveyor, personally superintended the planting of the stone marked “^B 1101” in the root hole of the fallen “Bounded Maple” marking the southwest corner of Military Lot 1101, used as a point in this boundary, yet, Mr. Brown insisted on the formality of swearing witnesses. We did not think it necessary.

EXCEPTION No. 2.

In Camp.

SATURDAY, August 6th, 1910.

Julius K. Monroe, Esq., Sec'ty Md. & W. Va. Boundary Commission.

DEAR SIR: My right as Commissioner in this case to request that proof, or testimony be taken whenever, and wherever I consider

that it will add strength to our locations, or is necessary to prove their correctness upon the ground, being denied by a majority of the Commission, I herewith make emphatic exception and protest to such action of the Commission, which is contrary to all right, and custom; and as I construe it, the terms of the Decree in this case.

I therefore make general exception and protest to all locations made by a majority of the Commission until this action is re-cinded. I further take exception generally, to the permanent location of any line, or the marking of the termini, or of any intermediate points in the same as a boundary between the States of Maryland and West

61 Virginia, unless such line, or specific points in the same, have been shown in connection with this case, and have been testified to by witnesses under oath.

Very truly,
(Signed)

W. McCULLOH BROWN,
Commissioner.

EXCEPTION No. 3.

In Camp.

SATURDAY, August 6, 1910.

Julius K. Monroe, Esq., Sec'y Boundary Commission.

DEAR SIR: A majority of the Commission having failed to summon witnesses to prove the location of any Deakins line, between Military Lot 1101 and the Maryland grant named Covent Garden and there being no testimony in the Record, or surveys made in this case giving satisfactory proof of such location, I make formal exception and protest to the permanent location of any line as now run, between Military Lot 1101 and Covent Garden, and also to the marking of the terminus in the 3rd line of Covent Garden, or to the erection of any intermediate monuments or marks, as upon Arnolds Ridge, or the Back Bone Mountain.

Yours truly,
(Signed)

W. McCULLOH BROWN,
Commissioner.

EXCEPTION No. 4.

In Camp.

THURSDAY, August 25th, 1910.

Julius K. Monroe, Esq., Sec'y Boundary Commission.

DEAR SIR: I take exception to the fact that neither Wm. Bittner or Daniel Gnegy though called upon *the* show corners (which were finally adopted) in the 3rd line of Covent Garden and in the new State Line, were put under oath.

Yours truly,
(Signed)

W. McCULLOH BROWN,
Commissioner.

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EXCEPTION No. 5.

In Camp.

MONDAY, *September 12, 1910.*

Julius K. Monroe, Esq., Sec't'y Boundary Commission.

DEAR SIR: I request that all witnesses who are called by the Commission to show any corner or object connected with the Boundary Line, be put under oath, and that each Commissioner be notified and given an opportunity to question said witness before such testimony is finally acted upon.

Yours truly,
(Signed)

W. McCULLOH BROWN,
Commissioner.

EXCEPTION No. 6.

In Camp.

SEPTEMBER 12TH, 1910.

Julius K. Monroe, Esq., Sec't'y Boundary Commission.

DEAR SIR: I would request that you as Secretary bring before the Commission, the question of having a regular stated weekly meeting of the Commission at which future action can be discussed, and the Journal reviewed and corrected.

I also request that Journal of the proceedings of the Commission, and their reasons for running and marking the boundary as is being done, be written up in full.

Yours truly,
(Signed)

W. McCULLOH BROWN,
Commissioner.

EXCEPTION No. 7.

In Camp.

SEPTEMBER 15TH, 1910.

Julius K. Monroe, Esq., Secretary Boundary Commission.

DEAR SIR: I would request that the Commission take the testimony of Mr. Peter F. Nine (as to the Sugar, the end of second line of "Eel Shine") as his testimony is not contained in the Record.

Yours truly,
(Signed)

W. McCULLOH BROWN,
Commissioner.

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EXCEPTION No. 8.

In Camp.

SEPTEMBER 15TH, 1910.

Julius K. Monroe, Esq., Sec't'y Boundary Commission.

DEAR SIR: I request that testimony be taken in regard to the Stake and Stone Pile supposed to be at the end of the Fifth Line of "Maryland", Before a line running through that point is finally adopted as in the State Line, or is permanently marked.

Yours truly,
(Signed)

W. McCULLOH BROWN,
Commissioner.

EXCEPTION No. 9.

In Camp.

SEPTEMBER 20TH, 1910.

Julius K. Monroe, Esq., Sec't'y Boundary Commission.

DEAR SIR: As I am creditably informed that a tract of land named "Resurvey on All The Chances" is being held, and has been held for upward of forty years (20 years prior to April 8th, 1890) under a Maryland title, and all rights of possession and ownership exercised over the same, I request that the Commission inquire into, and take testimony as to the State Boundary, under the Decree, at this point, which lies north west of the tract called "Maryland."

Yours truly,
(Signed)

W. McCULLOH BROWN,
Commissioner.

EXCEPTION No. 10.

In Camp.

SEPTEMBER 20TH, 1910.

Julius K. Monroe, Esq., Sec't'y Boundary Commission.

DEAR SIR: Before the Commission permanently mark the point in the third line of "Eel Shine" marked as Station 162 on the ground I would request that all possible means be tried to obtain proof as the "End of the 4th line of "Buck Dale" and its fifth line, and the location of the State line at this point.

Yours truly,
(Signed)

W. McCULLOH BROWN,
Commissioner.

In Camp.

SEPTEMBER 24TH, 1910.

Julius K. Monroe, Esq., Sec'y Boundary Commission.

DEAR SIR: Will you please bring the following facts before the Commission, and file the same in our Record.

A Special Warrant of Resurvey on "All the Chances" was granted by the State of Maryland to William Schley on September 13th, 1858. The return of the surveyor being filed on June 18th, 1859, and in due course a patent was issued. Under this patent "Resurvey on All the Chances" was sold by Messrs. Alexander, Williams, and Fisher Trustees March 24th, 1868 to John W. Stonebreaker. On June 26th, 1874, John W. Stonebreaker and Laura L. Stonebreaker sold "Resurvey on All the Chances" to Daniel E. Offutt, who still owns a portion of said land. Mr. Offutt, his Grantors, and his Grantees have paid taxes continuously in the State of Maryland on this property from the beginning, and exercised all acts of ownership and possession over the same.

The inception of title on a Special Warrant dates from the issuance of the warrant, because it must state the outlines to be included in the patent. In this case the warrant was dated September 13th, 1858, and the Certificate of Survey was returned on June 18th, 1859. According to Lieut. Michler's report (See Record page 842) he did not reach the Fairfax Stone with his party until June 17th, 1859. It is manifest therefore that the "Resurvey on All the Chances" was surveyed prior to the running of the line by Michler, and also that the land upon both sides of the provisional line which we are now running, has been held in possession under Maryland title for upward of forty years.

I therefore make specific exception and protest to the permanent location and marking of any State Boundary as now run upon the ground, between the end of the 21st line of "Resurvey on All the Chances" (it being a stake in a stone pile identified by witness), and any point intersecting, or bisecting the 19th line of the Resurvey (which line is supposed to coincide) with the 4th line of a tract called "Kindness."

Very truly,

(Signed)

W. McCULLOH BROWN,

Commissioner.

NOTE.—The land west of the "Old Line" covered by this survey is also covered by Virginia grants more than 100 years old, claimed by persons holding under them, and taxes paid to Virginia, continuously. In the grant issued by Maryland, on this survey, these words are used: "N. $27\frac{3}{4}^{\circ}$ W. 192 perches to the line of division between the States of Maryland and Virginia as recently fixed by Lieut. Michler under direction of Commissioners appointed for that pur-

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pose by authority of Acts of Legislature of said two states respectively, and with said line" etc. This could not be understood to refer to the "Deakins or Old State Line."

EXCEPTION No. 12.

In Camp.

SEPTEMBER 28TH, 1910.

Maryland-West Virginia Boundary Commission, c/o Julius K. Monroe, Sec't'y.

GENTLEMEN: I wish to bring before the Commission, and have entered in our Record, a general exception and protest to the permanent location and marking of any line (or lines) under the direction of this Commission as the boundary between the States of Maryland and West Virginia, in such a manner as will cause the line to either bisect, or cut off from the State of Maryland and those who hold and have possession under Maryland title, any appreciable area of land, no matter on what portion of the boundary it may be situated, provided the said land shall have been held under title from Maryland in uninterrupted use, possession or occupancy, (to the present time) with payment of taxes in Maryland, from a period of twenty years prior to the passage by the Maryland Legislature of the Act of 1890, Chapter 563, (Approved April 8th, 1890) authorizing the institution of the present suit against the State of West Virginia.

Very truly,
(Signed)

W. McCULLOH BROWN,
Commissioner.

EXCEPTION No. 13.

In Camp.

SEPTEMBER 28TH, 1910.

Julius K. Monroe, Esq., Sec't'y Boundary Commission.

DEAR SIR: I wish to bring before the Commission, and have entered in our Record, a general exception and protest to the permanent location and marking of any line or lines, under the direction of this Commission as the boundary between the States of Maryland and West Virginia, which bisect, or cut off from Maryland or the Maryland holders, any appreciable area of land, no matter on what portion of the survey it may be situated, which has been held under title and uninterrupted use and possession, for a period of forty years prior to January 1st, 1870, and upon which taxes have been paid in Maryland.

Yours truly,
(Signed)

W. McCULLOH BROWN,
Commissioner.

EXCEPTION No. 14.

In Camp.

OCTOBER 3RD, 1910.

Julius K. Monroe, Esq., Sec'ty Boundary Commission.

DEAR SIR: Please bring before the Commission my exception to the permanent adoption and marking of the "provisional line" where and as it was run upon Saturday October 1st, and is being continued, because it bisects old Maryland grants, and is east of the old Marked lines of the "Military Lots."

Very truly,
(Signed)

W. McCULLOH BROWN,
Commissioner.

NOTE.—Boundary was here corrected before receiving exception.

EXCEPTION No. 15.

In Camp.

OCTOBER 14TH, 1910.

Julius K. Monroe, Esq., Sec'ty Boundary Commission.

DEAR SIR: Please record in our Journal, my exception to the permanent location of the State Boundary in such a manner as will take from Maryland, and the present owner, Josiah Moon, that portion of the original survey of "Thomas & Ann" (which was surveyed in 1774) and which Mr. Moon now pays taxes on in Maryland, and has in possession under fence.

Yours truly,
(Signed)

W. McCULLOH BROWN,
Commissioner.

EXCEPTION No. 16.

In Camp.

OCTOBER 14TH, 1910.

Julius K. Monroe, Esq., Sec'ty Boundary Commission.

DEAR SIR: I learn that our provisional line as now being run north from Glovers Hill, has run east of a tract of land patented by Maryland to James Browning called "Border Life" which tract calls distinctly for an old State Line upon its western border, in the following terms "Beginning for the same on the line dividing the State of Maryland from the State of Virginia, and at the end of the second line of a tract of land called "Brownings Manor" resurveyed for Meshack Browning the 22 day of March, 1853, and running thence with and binding on the said

line dividing the State of Maryland from the State of Virginia, South 1320 perches to the tract of land called "Thomas & Ann," surveyed for Thomas Johnson the 9th. day of April 1774, then with the said tract". etc.

I take exception therefore to our present line, and request that such testimony or surveys be made as will establish the old line referred to in the above patents.

Yours truly,
(Signed)

W. McCULLOH BROWN,
Commissioner.

NOTE.—Was never held or occupied under Maryland grant, and does not refer to "Deakins, or Old State Line."

EXCEPTION No. 17.

In Camp.

OCTOBER 14TH, 1910.

Julius K. Monroe, Esq., Sec'ty Boundary Commission.

DEAR SIR: I wish to record my exception and protest to the permanent location and marking of the State Boundary, east of the tract of land called "Brownings Manor" which tract calls on its western border "For the Virginia Line, and with and bounding on said line, South 860 perches"; or to the running of a line which will bisect said tract. "Brownings Manor" is held in undisputed possession under Maryland title, by actual residents, who are paying taxes, and giving allegiance to the former State.

Yours truly,
(Signed)

W. McCULLOH BROWN,
Commissioner.

NOTE.—The "Virginia Line" here referred to is some 40 perches West of the Michler line, and the actual residents only claim to that line. These residents, with possibly one or two exceptions, have moved on this territory and cleared the land since the surveys made by the State of West Virginia in 1897. Covered by Virginia grant to Hoyer and Martin, and taxes paid in Virginia and West Virginia.

EXCEPTION No. 18.

In Camp.

OCTOBER 14TH, 1910.

Julius K. Monroe, Esq., Sec'ty Boundary Commission.

DEAR SIR: I request that the Commission take necessary testimony, and make such surveys as are required to correctly locate the old State boundary line as described in the patents called "Brownings Manor" surveyed for Meshack Browning March 26th, 1853, and the tract called "Border Life" surveyed for James Browning

March 30th, 1857, both of which tracts call for points in the line dividing the State of Maryland from the State of Virginia. The Maryland patentees and their assigns, have been, and are now paying taxes in Maryland, and are giving allegiance to her, in peaceable possession.

Yours truly,
(Signed)

W. McCULLOH BROWN,
Commissioner.

EXCEPTION No. 19.

In Camp.

OCTOBER 18TH, 1910.

Julius K. Monroe, Esq., Sec't'y Boundary Commission.

DEAR SIR: I wish to record a general exception to the running of segments of the present boundary line, where the termini are not clearly established and proved as points that should be run to as such termini. I take exception to the "backing in of lines" or "intersecting lines" without full warrant of fact. This exception to be general and cover all cases past, or that may arise in the future.

Yours truly,
(Signed)

W. McCULLOH BROWN,
Commissioner.

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EXCEPTION No. 20.

In Camp.

OCTOBER 18TH, 1910.

Julius K. Monroe, Esq., Sec't'y Boundary Commission.

DEAR SIR: Please record in our Record of Survey my exception and protest, to the permanent location and marking of the State Boundary Line east of, or in a manner to bisect the lands of the following owners of parts of the tracts of "Home" and of "Brownings Manor" both of which tracts call for "The Maryland and Virginia line" upon their western border, and not to the east.

Albert Shahan; tenant, Wm. Lawson.
Wm. H. Lewis.
F. O. Friend.
Wm. S. Collins.
Mrs. John Teets.
Eugene Teets.

The parties are assessed for this land in Garrett Co. pay taxes there, and up to the present vote and give allegiance to Maryland; Albert Shahan only being a non resident.

Yours truly,
(Signed)

W. McCULLOH BROWN,
Commissioner.

NOTE.—See Exception No. 17.

EXCEPTION 20A.

In Camp.

NOVEMBER 19TH, 1910.

Maryland-West Virginia Boundary Commissioners, c/o Julius K. Monroe, Sec'y.

GENTLEMEN: I wish to record my exception and protest to the running and location, and marking of our line of 1910, in its relation to the Maryland grant called "Home" which was surveyed for Meshack Browning under a Special Warrant, February 6th, 1840, and which has been in possession under that title ever since, and those residing upon it have heretofore given allegiance to the former State. This tract calls to begin "On the line dividing the State of Virginia from the State of Maryland," and runs north with that line." Our line as located I believe to be entirely east of "Home".

Yours truly,
(Signed)

W. McCULLOH BROWN,
Commissioner.

70 NOTE.—Does not refer to the "Deakins, or Old State Line" and is not even common with boundary line called for in "Brownings Manor."

EXCEPTION No. 21.

In Camp.

NOVEMBER 19TH, 1910.

Maryland-West Virginia Boundary Commissioners, c/o Julius K. Monroe, Sec'y.

GENTLEMEN: I take exception to the offset made by a majority of the Commission, from Station 352 eastward to the range of Military Lots numbers 1292 etc. and to the reason given that it was made to conform with the southern line of a grant of land made by Virginia to John Crane. No evidence being taken during the survey to warrant this change, neither do I find anything in the Record. The lands in Maryland affected by the above change, have been held in uninterrupted use and possession under title for more than fifty years.

Yours truly,
(Signed)

W. McCULLOH BROWN,
Commissioner.

NOTE.—Shown upon maps filed by defendant and its location testified to by surveyor in this cause.

EXCEPTION No. 22.

In Camp.

NOVEMBER 19, 1910.

Maryland-West Virginia Boundary Commissioners, c/o Julius K. Monroe, Sec't'y.

GENTLEMEN: I would request that testimony be taken by the Commissioners, in relation to the present ownership, possession, and title of a tract of land covered by a Maryland survey called "Agathos," surveyed for Hiram B. Wolf February 27th 1852. Which tract calls for "the line dividing the State of Maryland from the State of Virginia" upon its western border; and that the tract be located upon the ground in relation to our present line, with the view of ascertaining whether our line should not pass west of this survey.

(Signed)

W. McCULLOH BROWN,
Commissioner.

71 NOTE.—The "line dividing the State of Maryland from the State of Virginia" is not the "Deakins or Old State Line." This line is also some 30 perches West of the "Michler line" and is only partially claimed to that line. Covered by Hoyer and Martin-Crane.

EXCEPTION No. 23.

In Camp.

NOVEMBER 19TH, 1910.

To Maryland-West Virginia Boundary Commissioners, c/o Julius K. Monroe, Sec't'y.

GENTLEMEN: I once more repeat my request that our Commission hold frequent formal meetings for the full discussion of the procedure, method, and manner of our running of the Boundary Line, so that the reasons for the same may be fully understood, and may be spread upon the minutes at the proper time, and any objection by one of the Commissioners can be heard and recorded. In the absence of such meetings (which as you are aware have not been held) I emphatically reserve the right to alter or amend any exception that I may have already filed with the Secretary of the Commission, to make any additional, or new exception, and to ask the location of any land tract (or any line or lines of such tract) with reference to the boundary line of 1910, and to ask that any testimony be taken, or evidence examined which I may consider pertinent to the survey in hand. All witnesses called to be put under oath and their testimony recorded. This to cover any point of the line that may have been run.

I also ask that wherever or whenever a change is made in the course of direction of the Boundary Line, that testimony and proof

be obtained before the full Commission to show the reason for so doing, and that the change is made in conformity with the Decree of the Court.

Yours truly,
(Signed)

W. McCULLOH BROWN,
Commissioner.

EXCEPTION No. 24.

In Camp.

NOVEMBER 19TH, 1910.

Maryland-West Virginia Boundary Commissioners, c/o Julius K. Monroe, Sec't'y.

GENTLEMEN: I would request that the Commissioners take testimony as to the location, ownership and present possession of the tract called "Ligonia" for which the State of Maryland granted a Special Warrant of survey, April 11th, 1854. This Survey calls to run, "To the line which divides the State of Maryland from the State of Virginia and with this line North" etc. with the view of learning whether our line should not run west of this tract. I would like this survey located with relation to our line, when adopted.

(Signed)

W. McCULLOH BROWN,
Commissioner.

NOTE.—Does not refer to the "Deakins, or Old State Line." Covered by numerous Virginia grants.

EXCEPTION No. 25.

In Camp.

NOVEMBER 19TH, 1910.

To Maryland-West Virginia Boundary Commissioners, c/o Julius K. Monroe, Sec't'y.

GENTLEMEN: I make exception and I protest against the permanent adoption of a State Boundary Line which will bisect in part; and then run to the east of the Maryland land grant called "Agathos" which was surveyed for Hiram B. Wolf on February 27th 1852, and the throwing said tract into West Virginia, when the description in the patent of "Agathos" calls for "The line dividing the State of Maryland from the State of Virginia" as its western boundary. Further, so far as I am informed this patent is the oldest granted by either State for this land, and no evidence in the Record that I have found shows the location of a Virginia claim. The land in question has been held uninterruptedly in use and possession

under the Maryland title, and all deeds are recorded, and taxes paid in the latter State.

Yours truly,
(Signed)

W. McCULLOH BROWN,
Commissioner.

EXCEPTION No. 26.

In Camp.

NOVEMBER 19TH, 1910.

To Maryland-West Virginia Boundary Commissioners, c/o Julius K. Monroe, Sec't'y.

GENTLEMEN: I take exception to the running of the State Boundary Line to the eastward of the Maryland Land Grant called "Ligonia" which has been in possession under Maryland title
73 for upward of forty years, and whose western boundary calls "To the line which divides the State of Maryland from the State of Virginia, and with that line North" etc.

Yours truly,
(Signed)

W. McCULLOH BROWN,
Commissioner.

NOTE.—See Exception No. 24.

EXCEPTION No. 27.

In Camp.

NOVEMBER 26TH, 1910.

To Maryland-West Virginia Boundary Commissioners, c/o Julius K. Monroe, Sec't'y.

GENTLEMEN: I wish my exception recorded to the making of an additional offset in the Boundary Line, eastward from the north west corner of Military Lot 1402, along the second line of said Lot, because no testimony was taken to warrant this offset, and there is none in the Record; and because it is highly improbable that anyone would ever have made such an angle in a Boundary Line: Deakins if he ever ran a Line would not have run east of the line of the Military Lots which he had just laid off, especially as it is reported that "The line to which he laid off the Military Lots was far within that which might rightfully be claimed by the State of Maryland."

I take exception to the running of the line northward from Station 371, the eastern terminus of the above offset, and call the Commissioner's attention to the testimony of Thomas Browning, contained in the Record, as to the Deakins Line.

Yours truly,
(Signed)

W. McCULLOH BROWN,
Commissioner.

NOTE.—Explained in report on running of line.

EXCEPTION No. 28.

In Camp.

NOVEMBER 26TH, 1910.

To Maryland-West Virginia Boundary Commissioners, c/o Julius K. Monroe, Sec'y.

GENTLEMEN: I wish my protest recorded against the State
 74 Boundary as now ranged out upon the ground from Station
 371 on the second line of Military Lot 1402, because there is
 no proof that a State Line was ever run from this point, and be-
 cause it will take from the State of Maryland lands which have been
 held under title from that State for upward of 120 years and upon
 which taxes have been paid to her, and because several former citi-
 zens residing there and voting and paying taxes in Maryland will
 by this location be transferred into West Virginia. The land re-
 ferred to in a portion of "The Diadem" surveyed in the year 1774
 and Patented on December 3rd, 1791 situate then in Alleghany
 County Maryland. The title passing to the present holders through
 John Crane, who purchased one interest from Wm. I. Wallis Septem-
 ber 4th, 1839, and the remainder from Sarah Ann Jolly Campbell,
 September 26th, 1842.

Yours truly,
 (Signed)

W. McCULLOH BROWN.

NOTE.—The testimony in the Record in this case discloses the fact
 all persons owning or occupying land within the "Diadem" lines,
 West of the "Old State Line" as we ran it, claim citizenship in West
 Virginia, and have always paid taxes there, with one exception,
 Ethbell Falkenstine, the same person who, as a witness for the
 State of Maryland, pointed out upon the ground the Red-Oak
 (stump) as standing in the Old Deakins Line, and admitted that
 his land had been purchased from John Crane, and recorded in
 Preston County, until he transferred it to Maryland. The parties,
 which by the line just run, are thrown into West Virginia, all live
 upon this Falkenstine tract.

EXCEPTION No. 29.

In Camp.

NOVEMBER 19TH, 1910.

Maryland-West Virginia Boundary Commissioners, c/o Julius K. Monroe, Sec'y.

GENTLEMEN: I request that the Commissioners take testimony as
 to the title, ownership, and present possession of the Maryland tract
 called "Canrobert" Surveyed for Elijah Friend, December 18th,
 1854, and its position with relation to the line which it is
 75 proposed to run, with the view of possible change in said line.
 This Survey calls for "The line dividing the State of Mary-

land from the State of Virginia, and with this line North twelve hundred and eighty perches."

(Signed)

W. McCULLOH BROWN,
Commissioner.

EXCEPTION No. 30.

CRANEVILLE, W. VA., *July 13, 1911.*

To the Maryland-West Virginia Boundary Commissioners.

GENTLEMEN: I desire to repeat now, before the work of the survey and marking of the proposed boundary line, which the Commissioners are required to run and establish under the Decree of the Supreme Court is resumed, the request and demand that the Commissioners, as a body, hold regular stated meetings for the discussion of the proceedings, method and manner and all material details and circumstances of and connected with the running and locations and marking of the proposed boundary line, and that records or minutes be kept of said meetings; and that any demand by any of the Commissioners be reported and heard; that any objection to any decision of the majority of the Commissioners be reported and heard; and, further, that the Commission, acting as an organic body, proceed as such and both decide upon and execute its decisions with respect to the running of said line as such or in accordance with the decisions of said Commission as an organic body and acting as such.

In the absence of such meetings and such proceedings, which you are aware have not been held or pursued heretofore, I fully reserve the right at any time to file demands with respect to what

I deem the proper course to be pursued under and in accordance with the Decree of the Supreme Court under which we are acting, and to protest against and except to, at any time, the action or actions of the Commission with respect to any feature or proceeding concerning said proposed boundary line.

I also respectfully request and demand that, upon the application of any one of the Commissioners, testimony be taken or evidence adduced or examined which such Commissioner may consider pertinent to the survey and location of said boundary line. That such request be granted and such testimony be taken under oath, and that all witnesses called be put under oath and their testimony recorded, with the right to any Commissioner or Counsel for either the State of West Virginia or the State of Maryland to examine or cross examine such witnesses.

I also ask again that wherever or whenever a change is made in the course or direction of the boundary line or the location of any part thereof, that testimony and proof be obtained before the full Commission, upon the demand of any one Commissioner therefor, to show the reason for such change, and that all changes as well as all other proceedings of the Commissioners be in conformity with the decree of the Supreme Court.

Very respectfully yours,
(Signed)

W. McCULLOH BROWN.

EXCEPTION No. 31.

In Camp.

CRANESVILLE, W. VA., *July 13, 1911.*

To the Maryland-West Virginia Boundary Line Commission, Julius K. Monroe, Esq., Sec'ty.

77 GENTLEMEN: I wish to record my exception and protest to the present location of our proposed Boundary Line, in its relation to the Maryland land grants known as "Ligonia" and "Pine Swamp", which by our survey are practically transferred to the State of West Virginia.

(Signed)

W. McCULLOH BROWN,
Commissioner.

EXCEPTION No. 32.

In Camp.

CRANESVILLE, W. VA., *July 13, 1911.*

To the Maryland-West Virginia Boundary Commissioners, Julius K. Monroe, Esq., Sec'ty.

GENTLEMEN: I would request that testimony be taken in relation to the possession and ownership of the land covered by the Maryland tract of land called "Tudor", which was patented by the State of Maryland to John Crane, and by him deeded to Israel Frankhauser, and is still in possession of the latter's heirs, who pay taxes upon the same in Maryland. By our present running a portion of this tract is placed upon the West Virginia side of the line. I am ready to exhibit Maryland Patent, and deeds for the above land.

(Signed)

W. McCULLOH BROWN,
Commissioner.

NOTE.—Covered by Virginia patents to Stephen West & John Summers; owned by John Crane.

EXCEPTION No. 33.

In Camp.

CRANESVILLE, W. VA., *July 13, 1911.*

To the Maryland-West Virginia Boundary Line Commission, Julius K. Monroe, Esq., Sec'ty.

GENTLEMEN: I request that you examine the Patent of the "Diadem", and all papers relating to the subdivisions as such portions are now owned by citizens of the State of Maryland, and upon which taxes are paid into the treasury of Garrett County, with the

view of ascertaining whether our Boundary Line as now located, does not cut from the State of Maryland territory which is rightfully hers.

I also request that you take the testimony of Chas. Falkenstine, Clyde Falkenstine and Samuel Strawser as to which State they have given allegiance to up to the present time, and which State has called upon them for Jury duty. I would ask that you take the same sworn testimony of Wm. H. Lewis, F. Orval Friend, and Eugene Teets.

(Signed)

W. McCULLOH BROWN,
Commissioner.

NOTE.—Chas. Falkenstine, Clyde Falkenstine, and Samuel Strawser all live on portions of the Ethbell Falkenstine tract. See No. 28. Wm. H. Lewis, F. Orval Friend, and Eugene Teets live on "Browning's Manor"—which see—

EXCEPTION No. 34.

In Camp.

CRANESVILLE, W. VA., July 15, 1911.

To the Maryland-West Virginia Boundary Line Commissioners, Julius K. Monroe, Esq., Sec't'y.

GENTLEMEN: I would request that you examine the title papers of the Maryland tract called "Canrobert", and take such testimony, or run such lines as will show whether or not the marked line which we have found near the summit of Fikes Hill is approximately upon the original location of the western most line of that tract, or whether a portion of the original survey lay to the west of our present running.

(Signed)

W. McCULLOH BROWN,
Commissioner.

EXCEPTION No. 35.

In Camp.

CRANESVILLE, W. VA., July 15, 1911.

To the Maryland-West Virginia Boundary Line Commission, Julius K. Monroe, Esq., Sec't'y.

GENTLEMEN: I wish to record my exception and protest to the permanent location and marking of the Boundary Line in such a manner as will throw a portion of the Maryland grant called "Tudor" containing 31¼ acres of land to the State of West Virginia. Thus depriving the State of Maryland of that much territory upon which she and her citizens have exercised possession.

79 "Tudor" was Patented to John Crane by the State of Maryland under Warrant of re-survey dated the 18th day of Feb-

ruary 1835, and from him was passed by deed in uninterrupted procession to M. H. Frankhauser of Maryland.

(Signed)

W. McCULLOH BROWN,
Commissioner.

EXCEPTION No. 36.

In Camp.

CRANESVILLE, W. VA., *July 15, 1911.*

To the Maryland-West Virginia Boundary Line Commission, Julius K. Monroe, Esq., Sec't'y.

GENTLEMEN: I wish to record my exception and protest against the permanent location and marking of the State Boundary Line in a manner which may be considered far east of that to which the citizens of Maryland have had possession, and to which they are now paying taxes into the treasury of the State of Maryland.

The tract called "The Diadem" is one of the oldest surveys made by, or in behalf of the State of Maryland, April 11, 1774, and antedates any grant made here by the State of Virginia. Taxes were paid on the entire tract in Maryland, until its transfer to John Crane by the heirs of Abraham Van Bibber in or about the year 1860. (See Record, Page 704.) By this running Maryland is deprived of many acres of valuable land, and some of her citizens are placed in the State of West Virginia.

(Signed)

W. McCULLOH BROWN,
Commissioner.

NOTE.—See no. 28.

EXCEPTION No. 37.

In Camp.

ELDER SPRING, *July 27, 1911.*

To the Maryland-West Virginia Boundary Line Commissioners, Julius K. Monroe, Esq., Sec't'y.

GENTLEMEN: I request that before the permanent location and marking of the Boundary Line which we are running is made, you take the testimony of Jefferson Birch, Sherman Friend, Samuel Falkner, Fred Falkner, Martin Falkner, and Melville Friend, as to which State they have given their allegiance to, and have been called upon for Jury duty, and to which State they pay their taxes.

(Signed)

W. McCULLOH BROWN,
Commissioner.

EXCEPTION No. 38.

In Camp.

SELBYSPOUT, *July 31, 1911.*

To the Maryland-West Virginia Boundary Line Commission, Julius K. Monroe, Esq., Sec'y.

GENTLEMEN: When running our line of Boundary north from the locality of Sherman Friends, I request that when selecting the several points which will be used as the basis of the course, and through which our Boundary Line will pass, that you endeavor to ascertain whether these points and this line, are common in the present holdings and possession of the citizens of the two States, along and bordering on said line; and whether the line as we will run it, has been practically acknowledged as the Boundary when taxes were paid. I would like witnesses examined under oath.

(Signed)

W. McCULLOH BROWN,
Commissioner.

(Here follow 36 photographs, omitted in printing.)

NOV 3 1881
JAMES H. WALKER

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1881.

No. 1, Original.

THE STATE OF MARYLAND, COMPLAINANT,

vs.

THE STATE OF WEST VIRGINIA.

**SEPARATE REPORT OF COMMISSIONER W. H. BROWN,
BROWN, INCLUDING PROTESTS AND EVIDENCE
IN RESPECT TO THE REPORT OF COMMISSIONER
JULIUS E. MONROE AND SAMUEL S. GARDNER.**

ISAAC LOBE STRAIN,

Attorney General of Maryland.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 1, Original.

THE STATE OF MARYLAND, COMPLAINANT,

vs.

THE STATE OF WEST VIRGINIA.

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1 To the Hon. James H. McKenney Clerk of the Supreme Court of the United States:

Please file this report etc., etc.

ISAAC LOBE STRAUSS,
Attorney General of Maryland.
W. McCULLOH BROWN,
Commissioner.

Supreme Court of the United States.

No. 1, Original.

THE STATE OF MARYLAND, Complainant,
vs.
THE STATE OF WEST VIRGINIA.

In Equity.

The Separate Report of W. McCulloh Brown, Commissioner, Including Protests and Exceptions in Respect to the Report of Messrs. Julius K. Monroe and Samuel S. Gannett, Commissioners.

Approved—

ISAAC LOBE STRAUSS,
Attorney General of Maryland.

2 To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:—

The separate report of W. McCulloh Brown, one of the Commissioners heretofore appointed by a decree of the Honorable Court, bearing date the 31st day of May, 1910, in a cause in said court depending, wherein the State of Maryland is complainant and the State of West Virginia is defendant, the same standing as No. 1 Original on the Equity side of said Court, respectfully shows:

It is with deep regret that Commissioner Brown cannot make the report of the Commission in this case unanimous, but owing to certain proceedings of and locations of the boundary line as run and marked by the majority of the Commissioners, he feels that by said proceedings and locations upon the part of said majority of the Commissioners, the decree of the Court with respect to said boundary line has not been properly carried out and that injustice will be done to many citizens living adjacent to the boundary, and that this separate report is proper and necessary.

Therefore, Commissioner Brown dissents from said proceedings and report of Messrs. Monroe and Gannett, the majority of the Commissioners, and excepts to and protests against many parts of the same and the locations and markings made and done at various parts of the boundary line proposed and reported by them, and to

other parts of the map filed with their report by said majority of the Commissioners, showing said locations and markings are part
 3 of said report and map, so excepted to and protested against, and particularly referred to hereinafter as follows:

I.

1. At the very outset of the work upon the boundary, Commissioner Brown contended that the first clause of the decree, passed in the cause, made it obligatory upon the Commission to begin the Boundary at low water mark on the south bank of the North Branch of the Potomac River, at "the point where the North and South line from the Fairfax Stone crosses the said North Branch of the Potomac"; but a majority of the Commission refused to ascertain this initial point of said boundary, by fixing it in a North and South line from the Fairfax Stone, and instead of said initial point of the boundary being in a north and south line from the Fairfax Stone, the same is sixty-five feet east of where it should be as provided in the decree of this Honorable Court. This refusal on the part of a majority of the Commission, to carry out the plain provisions of the decree, at once resulted in difference between the Commissioners as to the method and manner of continuing the work of the Commission, thus based upon a false and erroneous beginning.

Commissioner W. McCulloh Brown contended that according to the decree beginning at the Fairfax Stone, a meridian line should be run to the south bank of the North Branch of the Potomac River at the low water mark, and from that point, the boundary should be prolonged northward to the beginning of a tract of land called Mount Pleasant, which beginning calls for "A White Oak standing on a line drawn north from the fountain head of the North Branch of the Potomac River," this point being acknowledged by both the
 4 State of Maryland and the State of West Virginia, as being a common point in the boundary between the States, and so acknowledged by the property holders and citizens living adjacent thereto; or, that another point practically in the same North line, being a little farther northward should be taken as the objective point, which latter point is described in a patent granted by the State of Virginia to John Petty John for four hundred acres of land, surveyed May 30th, 1781. (Record page 463) "As beginning at a White Oak in the Maryland line and running thence North $47\frac{1}{4}^{\circ}$ W. 78 p. to Cherry Tree, N. 80° W. 34 p. to Cherry Tree on a branch of Yohaganian, N. 40° W. 21 p. crossing Yo- to a White Oak N. 70° W. 68 p. to a hickory. Due S. 36 p. to a White Oak and Pointers, S. 21° W. 72 p. to a Maple, S. 178 p. to Pointers S. 32° W. 44 p. to White Oak, S. 73° E. 220 p. to Pointers in the Maryland line and with s'd line N. 226 p. to the beginning."

This latter White Oak tree was cut down by the Commissioners and axe marks taken from it, corresponding exactly with the date of the original survey, which established this tree without a question of doubt, as being the original marked in the survey quoted above, and as a point accepted by the Commissioners, and both the States as in the common boundary. Messrs. Julius K. Monroe and

Samuel S. Gannett over-ruled the contention of Commissioner Brown, refusing to take testimony, urged and demanded by him, and proceeded to run a line from the Fairfax Stone to the beginning of the Military Lot 1101, and at the inter-section of this line
 5 with the south bank of the Potomac River at low water mark, they later built and established a monument as the initial point of the boundary to be surveyed by them, ignoring the mandate of the decree, which says, "And running thence with the south bank of the Potomac River at the low water mark, to the point where the North and South line from Fairfax Stone crosses the said North Branch of the Potomac."

II.

Owing to action of the majority of the Commission in refusing to take any testimony whatsoever, even though the necessity and advantage of so, doing was repeatedly urged by Commissioner Brown, when such taking of testimony is fully provided for by the decree of this Honorable Court, which provides, "That said Commission may arrange for their organization, their meetings, and the particular manner of performance of their duties, and are authorized to adopt all ordinary and legitimate methods in the ascertainment of the true location of said boundary line, including the taking of evidence under oath and calling for papers and documents," etc. Commissioner Brown took exception and made protest in the following manner:

"In Camp,

SATURDAY, August 6th, 1910.

Maryland-West Virginia Boundary Commission,
 Julius K. Monroe, Esq., Sec'ty.

DEAR SIR: My right as Commissioner in this case to request that proof, or testimony be taken whenever, and wherever I consider that it will add strength to our locations, or is necessary to prove their correctness upon the ground, being denied by a majority of
 6 the Commission, I herewith make emphatic exception and protest of such action of the Commission, which is contrary to all right, and custom; and as I construe it, the terms of the Decree in this case.

I therefore make general exception and protest to all locations made by a majority of the Commission until this action is rescinded. I further take exception generally to the permanent location of any line, or of the marking of the termini, or of any intermediate points in the same, as a boundary between the States of Maryland and West Virginia, unless such line, or specific points in the same, have been shown in connection with this case, and have been testified to by the witnesses under oath.

Yours truly,

W. McCULLOH BROWN,
Commissioner."

"In Camp,

WEDNESDAY, July 20th, 1910.

Maryland-West Virginia Boundary Commission,
Julius K. Monroe, Esq., Sec't'y.

DEAR SIR: As a majority of the Commission have seen fit to refuse to take testimony at my request in relation to the location of the beginning of Military Lot 1101, I hereby make formal exception and protest to the permanent location and marking of a State boundary line to, or from that point.

Yours truly,

W. McCULLOH BROWN,
Commissioner."

7 3. When the Commissioners, in the course of the survey which was begun at the Fairfax Stone, arrived at the beginning of Military Lot, 1101, they calculated the course of a line which they believed would pass through a point to the northward, where they expected to find an alleged "Four Mile Tree." This tree was supposed to be at Red B. 1 marked upon the plats introduced and filed by West Virginia in the case in the Supreme Court. This Four Mile Tree, it was claimed, had stood in the alleged Deakins Line. The line was accordingly run north from the beginning of Lot No. 1101, but when it had proceeded northward to the point where the alleged Four Mile Tree was supposed to be, no object whatever was discovered or discoverable upon the ground as ascertaining or indicating the point, and no testimony was taken to prove the point sought.

The majority of the Commissioners, Messrs. Monroe and Gannett, ignored the fact last stated as to the entire absence of any indication upon the ground, as to the location of the alleged Four Mile Tree, and still proceeded to prolong the line northward until it intersected a point in the third line of the Maryland tract called "Covent Garden," which was surveyed in 1774.

Mr. Brown, Commissioner, asked for testimony both as to the beginning of Lot No. 1101, and as to the point of intersection with "Covent Garden," contending that there was no evidence of the Deakins Line between the two points; and contending further, that before the line should be located and run as above stated, there should be some evidence of the existence of the Deakins line on the ground. The majority of the Commissioners, Messrs. Monroe and Gannett, refused to take any testimony and failed to produce any at all, which tended to establish or locate the existence of the alleged Deakins Line in that vicinity.

8 Commissioner Brown protested against and excepted to this decision and action upon the part of the majority of the Commissioners as follows:

"In Camp.

SATURDAY, August 8th, 1910.

Maryland-West Virginia Boundary Commission.

Julius K. Monroe, Esq., Sec'y.

DEAR SIR: A majority of the Commission having failed to summon witnesses to prove the location of any old line between Military Lot 1101 and the Maryland grant named 'Covent Garden' and there being no testimony in the Record, or surveys made in this case giving satisfactory proof of such location, I make formal exception and protest to the permanent location of any line as now run between Military Lot 1101 and Covent Garden, and also to the marking of the terminus in the 3d line of Covent Garden, or to the erection of any intermediate monument or marks, as upon Arnold's Ridge or the Back Bone Mountain.

Yours truly,

W. McCULLOH BROWN.

Commissioner.

As contradistinguished from the action and course pursued by the majority of the Commissioners, Messrs. Monroe and Gannett, with respect to the prolongation from Fairfax Stone northward to the third line of "Covent Garden," and in view of the entire absence, as above stated, of any evidence upon the ground of the existence of the Deakins Line or Old Line, Mr. Brown, the Commissioner, requested and demanded that, there being no evidence
9 of the Deakins or Old Line between the points above referred to, as above stated, the proper course under the Court's decree was to run a straight line from the Fairfax Stone to the beginning of the tract called "Mount Pleasant," or to the beginning of John Petty John land of four hundred acres, which point is acknowledged by both the States of West Virginia and Maryland to be a point in the common boundary between the two States; and for the further reason that a line thus run would answer the calls given in the oldest papers extant in either State, and the oldest line to which we have any reference. In the patent of the Petty John Tract of Four hundred acres, issued by the State of Virginia in 1781, the East lines of the said Petty John Tract called for White Oak trees "standing in the line dividing the State of Maryland from the State of Virginia."

The majority of the Commissioners, Messrs. Monroe and Gannett declined to accede to or grant the request and demand of Mr. Brown, the third Commissioner, as above stated, namely that the line be run from the Fairfax Stone as an approximate meridian line to the point at the beginning of Mount Pleasant, conceded by both States to be in the common boundary between them.

Against this decision and action upon their part, Mr. Brown, the Commissioner entered a protest at the time, which was given to the Secretary of the Commission, as above set forth. The majority of the Commissioners, against the protests of Commissioner Brown, ran

and prolonged the line from the Lot 1101 to the point in the third line of "Covent Garden" above specified.

By so running the line as last aforesaid, and by refusing to grant the application and demand of Commissioner Brown that the line be run northward from the Fairfax Stone to a point at the beginning at Mount Pleasant, the majority of the Commissioners deprived the State of Maryland of a triangular piece of ground approximately three and three-fourth miles long, and at its base upward of four hundred feet in width, the apex of this triangle near Monument No. 1 and the base along the third line of "Covent Garden," between Monument- No. 4 and No. 5.

By the action of the Commissioners above complained of, the State of Maryland has been deprived of the land in question.

In connection with the protests above made, and the adverse action of the majority of the Commissioners depriving Maryland of the territory embraced in the triangle above described. The testimony in the Record shows that the State of Maryland has been in possession for many years of the territory in question, her citizens having paid taxes thereon to that State, and that timber was cut and sold from said territory under Maryland title. (See particularly testimony of Mr. Frear and Webster Wilson in the Record upon this subject, and affidavit of the Treasurer of Garrett County.)

Attention is called to Record page 1756, cross-examination of Julius K. Monroe, surveyor on behalf of the State of West Virginia, where he declares that up to that time, he had no direct proof that Deakins had run a line.

"423rd Q. You have also stated in chief that you began your survey of the line in this case at the Fairfax stone. This point is common with the Michler meridian, is it not?"

A. "It is."

"424th Q. From this point your object you have stated was to retrace some old lines supposed to have been run from this point? Is that correct?"

A. "It is to locate it on the ground."

11 "425th Q. What old line were you attempting to retrace?"

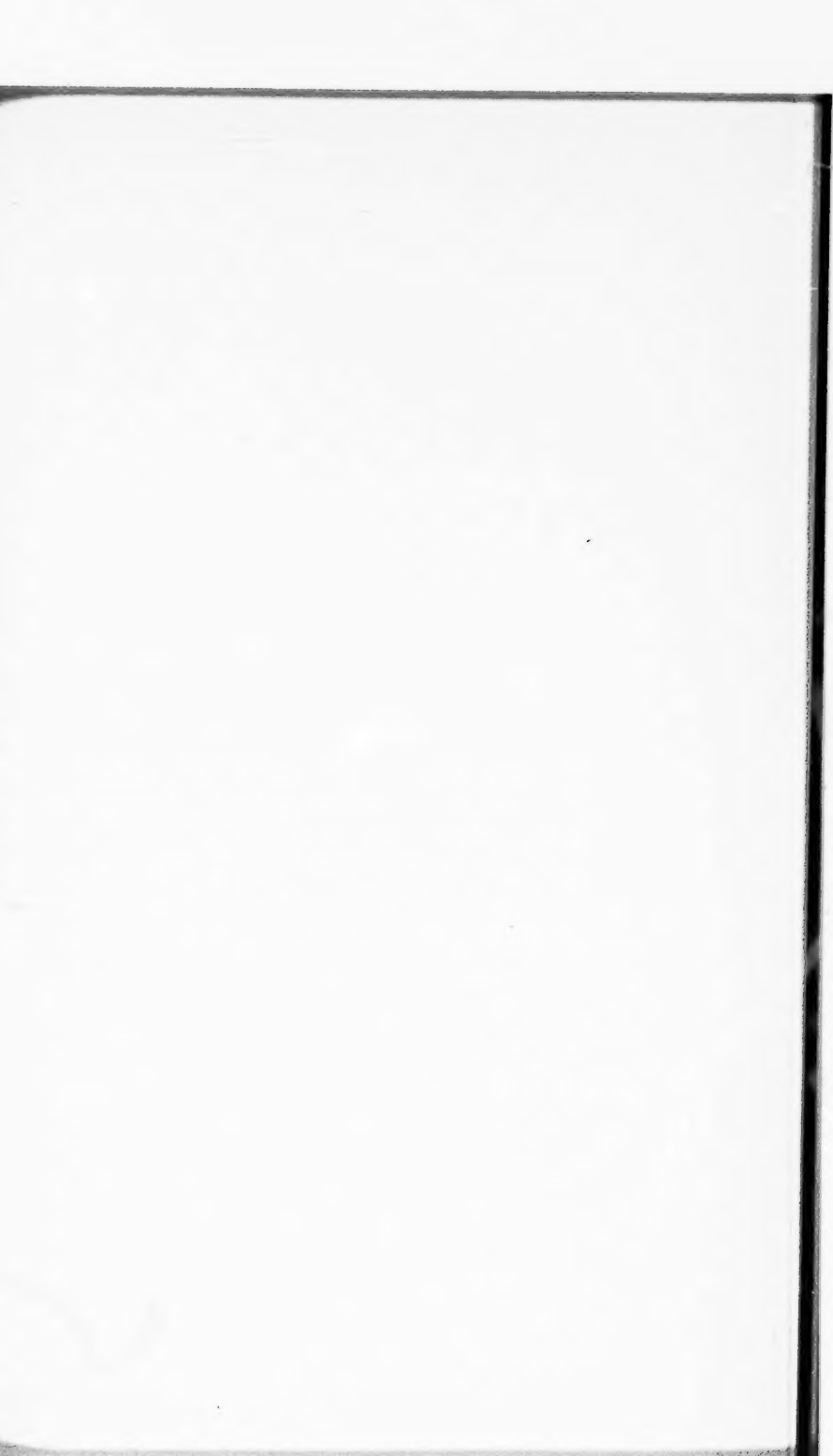
A. "I understood that Francis Deakins ran a line from that point northward."

"426th Q. But you have no proof that he did run such a line, have you?"

A. "I have no direct proof; no, sir."

Many of the marks and lines here in question are of comparatively recent date, as will be set forth more fully.

The stone marked "1101 B" frequently referred to, is not an ancient object, but was placed in its present position and lettered by W. McCulloh Brown in the course of the survey of a tract of land called "Fairfax" in the year 1876, for the purpose of marking one of the corners of that tract, then surveyed. Undoubtedly any of the marks which the Commission may have seen were no more ancient than the stone, for none were proved to be old, and the work was based upon supposition, as note testimony in the Record, page 1382.



J.T. Goss
1000 ft.

1782

J. Petty John
400 ft.

1781

J. Petty John

330 ft.

1782

Zarah Osborn

660 ft.

1782

Mon. 8
W. Oak

Mon. 6 1774

Mt. Pleasant

Convent Garden
1774

Mon. 5
Mon. 4

Fairfax Stone to Mt. Pleasant. Not Mon. Neg.
line as surveyed 1910



when in the return of the survey made by Mr. Julius K. Monroe, he says:

"At 314.08 poles, passed 6/10 pole west of a planted stone, marked 'N 1101' with a much decayed branch of a maple tree lying from said stone. This point is believed to be the beginning corner of Military Lot 1101," etc.

Again in direct examination of Julius K. Monroe, Record page 1634, in answer to question No. 109:

12 "109th Q. Was this stone and maple pointed out to you by any one as the corner of any tract or piece of land?"

"A. I do not recall that it was just at this time. I am not sure about that. I have no note of it. I had these papers, however, in my possession, looking for those points."

Again on page 1722 of the Record:

"68th Q. Did any one point that spot out to you as the corner of lot 1101?"

"A. I do not recollect certainly about that."

In the return of Mr. Julius K. Monroe as given on page 1383 of the Record (top of page) he affirmed his belief without proof, as to the place where there may have been a "Four Mile Tree."

"At 1284.6 poles passed 85/100 poles west of a stake and pointers believed to be the point where the point where the 'Four Mile Tree' stood on said Deakins Line," etc.

Commissioner W. McCullih Brown knows of no further proof having been obtained as to the identity of these points in question, and declares that the lines (if any were followed by the Commission), were those marked and held as "The eastern boundary of Virginia land grants as held by citizens of West Virginia as the old State Line," and were not in any line that may have been formerly run as a State boundary.

III.

As against the very vague and uncertain locations made by the majority of the Commission the attention of the Court is called to the series of old surveys made from 1774 to 1782, all of which patents call for and acknowledge the existence at that time of a State Line as running north from the Fairfax Stone.

See accompanying Map A and the patent and Mount Pleasant.

(Here follows map marked page 13.)

14 Baker Johnson, His Patent "Mount Pleasant" 1000 Acres.

The State of Maryland, &c.:

Know Ye that whereas Baker Johnson, Esquire of Frederick County had surveyed for him a tract or parcel of land called "Mount Pleasant" lying formerly in Frederick but now in Washington County and containing one thousand acres by virtue of a Warrant for that quantity obtained by him out of the Late Proprietary's Land Office the twenty-sixth day of March, Seventeen hundred and seventy-four, according to the conditions of plantation then in force as appears and the right of the Proprietary being now vested in the State of Maryland.

The said State doth hereby grant unto him the said Baker Johnson, Esquire the aforesaid tract or parcel of land called "Mount Pleasant" lying in Washington County aforesaid.

Beginning at a bounded White Oak standing on the North line drawn from the fountain head of the North branch of Potomack River and near the West side of the road leading from Archies Spring Glade to Tygers Valley and running thence South seventy-two degrees East three hundred and twenty perches, North twenty degrees East four hundred and ninety perches North forty-nine degrees West one hundred and twenty-two perches South forty-five degrees West one hundred and thirty-two perches North thirty-eight degrees West one hundred and forty perches North seventy-two degrees West forty-eight perches then with a straight line to the beginning.

Containing One Thousand Acres, according to the Certificate of Survey thereof, taken and returned to the Land Office bearing date the 13th of April, 1774, and there remaining; together with all rights, profits, benefits and privileges thereunto belonging. To have and To Hold the same unto him the said Baker Johnson his heirs and assigns forever.

Given under the Great Seal of the State of Maryland this twenty-second day of May, Seventeen hundred and eighty-seven.

Witness the Honorable John Rogers Esquire Chancellor.

15 [THE GREAT SEAL.]

J. ROGERS, *Chan'r.*

W. SMALLWOOD.

Mem'o. I have altered the first course in this Patent from a West to an East course. The correction is made in virtue of an Act of Assembly of December Session 1841, chapter 288. 28th July, 1842. G. G. Brewer, Reg. Ld. Off. Md.

LAND OFFICE OF MARYLAND, *set*:

I hereby certify that the foregoing is a true copy of the Patent of "Mount Pleasant" 1000 acres, patented to Baker Johnson, 22nd May, Seventeen hundred and eighty-seven, as recorded in Liber I. C. No. C. folio 180 &c., one of the Record Books on file in this office.

In testimony whereof, I have hereunto set my hand and affixed the

Seal of the Land Office of Maryland, this twenty-eighth day of October, Nineteen hundred and eleven.

[Seal of the Land Office of Maryland.]

THOMAS A. SMITH,
Commissioner of the Land Office.

16 [Endorsed:] Copy. Baker Johnson, his Patent, "Mount Pleasant" 1000 acres. Md. Exhibit A. A.

17 MD. EXHIBIT AA (1774).

A copy of which was offered to the Commission, which calls "to begin at a bounded white oak standing on the north line drawn from the fountain head of the North Branch of Potomack River," etc.

Other patents contained as part of the Record in this case all show the existence of an old and acknowledged line which must have had its origin very nearly upon a south course to the Fairfax Stone as will be shown by the following abstracts taken from the Record.

The John Petty John tract of 400 acres, surveyed in 1781, (see Record, page 463) calls to "Begin at a White Oak in the Maryland line, etc." This tree was cut as stated above and three separate sets of axe marks were cut from it, one set made 129 years ago, another 117 years back, and the last 78 years. This most remarkable tree, and its exhibit of marks proved its identity without dispute, and should fix the State Line. The tree stood at Monument No. 8.

The John Petty John tract of 330 acres surveyed 1782, (Record page 466) also calls to "Begin at pointers in the Maryland Line."

The patent of Sarah Osborn, 660 acres tract (Record page 468) calls, "Beginning at pointers in the Maryland Line, corner to John Petty John, and running with the Maryland Line due S. 280 P. to a maple etc."

The John T. Goff tract of 1000 acres, surveyed 1782, (Record page 1776) calls for one of its lines to run "To a White Oak in the Maryland Line, corner to said John Petty John, thence N. with said line etc."

With all these calls and objects located, it is reasonable to suppose that these tracts bounded upon a common line and that
18 as recited in the patent for Mount Pleasant, Exhibit AA, they were all in a continuous line "Drawn North from the fountain head of the North Branch of the Potomac River," and not in such an irregular line as was located by the Commissioners, Messrs. Julius K. Monroe and Samuel S. Gannett; and that the boundary should be thus run.

(In order that the exceptions and explanations in this report may be more fully understood and the relative points upon the Boundary Line located, attention is called to the Map of the Surveys made and

returned with the report of Messrs. Julius Q. Monroe and Samuel S. Gannett, the majority of the Commission, upon which the thirty-four principal Monuments, or marks in the line, are designated and numbered. From these numbered Monuments, distances and objects upon other parts of the Map can be easily located).

IV.

With respect to the location of the proposed boundary line between the two States, at or about a part of the tract of land called "Re-survey on All the Chances" at about eleven miles north of the Fairfax Stone, and six hundred feet south of Monument No. 13, and near, and East of Lauer Hill, and adjoining the tract called "Maryland," W. McCulloh Brown, Commissioner, offered to the Commissioners appointed by the Court "to run, locate and establish the boundary line between the two States," the following evidence and testimony to wit:

1. A special warrant of "Re-survey on All the Chances" granted by the State of Maryland to William Schley, on September 13 1858, together with the warrant of the survey filed on June 18, and a certified copy of the patent issued by the State of Maryland and said lands to William Schley, dated the 23rd day of March, 19 1860.

The land so surveyed and patented and issued to William Schley is more particularly described in said certified copy of said patent to said Schley, filed herewith as "Maryland Exhibit A" and prayed to be read and taken as part hereof.

20 William Schley, His Patent, "The Resurvey on All the Chances," 1173½ Acres.

THE STATE OF MARYLAND:

To all persons to whom these presents shall come, Greeting; Know Ye, That whereas William Schley of Baltimore City, on the thirteenth day of September, Eighteen hundred and fifty-eight, obtained out of the Land Office a Special Warrant to Re-Survey a tract or parcel of land called "All the Chances," lying in Allegany County with liberty of correcting errors, adding any contiguous vacancy, and of reducing the whole into one entire tract. In pursuance whereof a re-survey was made and a Certificate thereof returned when the same was found to contain clear of elder surveys, with five hundred and twenty-nine acres of vacant land added, the quantity of one thousand one hundred and seventy-three and one half acres and called "the Resurvey on All the Chances" and the said William Schley having fully compounded for the said vacancy according to law.

The State of Maryland, doth therefore hereby Grant and Confirm unto him the said William Schley, the said land resurveyed as aforesaid, with the vacancy added, reduced into one entire tract and called "the Resurvey on All the Chances," lying in Allegany County aforesaid.

Beginning for the outlines of the whole at the beginning of a tract of land called "Maryland" surveyed for John Hoyer the tenth day of August, Eighteen hundred and eleven, it being the end of the second line of part of "All the Chances" the original and the end of the fifth line of a tract of land called "Piney Bottom," and running thence reversing the lines of the original with an allowance of one and one fourth degree- to the right for variation, (1) North fifty-three and one fourth degrees East one hundred and fifty-four perches, then reversing the first and the given lines of the original, with the aforesaid variation, (2) North eight and one fourth degrees east eight hundred and three perches, (3) North sixty and one fourth degrees East two hundred perches, then reversing the seventeenth line of the original, as corrected, (4) South seventy-one and one fourth degrees West two hundred and six perches, (5) South fifty-seven and one fourth degrees West one hundred and thirty-seven perches, (6) then South two and three fourths degrees West thirty-two perches, to the end of the ninth line of the original and reversing the lines thereof with the aforesaid variation, (7) South sixty-three and three fourths degrees East sixty-five perches, (8) South fifty and three fourths degrees East twenty-eight perches, (9) South two and three fourths degrees East sixty-five perches, (10) South nine and one fourth degrees West four hundred and eighty-six perches, (11) South sixty-six & one fourth degrees West one hundred and ninety perches, then (12) North one and one fourth degree- East three hundred and twenty-nine perches to the end of the twelfth line of the original and reversing the lines thereof with the aforesaid variation, (13) North sixty-six and one fourth degrees East eighty-two and one half perches, (14) North two and three fourths degrees East three hundred and twenty perches, (15) South seventy-nine and three fourths degrees East sixty-seven perches, to the end of the sixth line of this resurvey and reversing it, (16) North two and three fourths degrees East thirty-two perches, to the end of the fifteenth line of the original and reversing it and the fourteenth line thereof with the aforesaid variation, (17) North sixty-three and three fourths degrees West eighty perches, (18) North twenty-seven and three fourths degrees West one hundred and sixty-two and one half perches, then still (19) North twenty-seven and three fourths degrees West one hundred and ninety-two perches to the line of division between the States of Maryland and Virginia, as said line has been recently fixed by Lieutenant Michler, under the directions of the Commissioner appointed for that purpose, by authority of an Act of the Legislatures of said two States, respectively, and with said line with an allowance of one half degree to the right for magnetic variation, (20) South one half degree West one thousand and eighty-five perches, (21) then South eighty-eight and three fourths degrees East thirty-two perches to the end of the fifth line of the aforesaid tract called "Maryland," and with the given line thereof, (22) South forty-seven degrees East one hundred and fifty-seven perches to the beginning.

Containing One thousand one hundred and seventy-three and one half acres of land, according to the Certificate of Resurvey thereof

taken and returned into the Land Office bearing date the eighteenth day of June, Eighteen hundred and fifty-nine, and there remaining. Together with all rights, profits, benefits and privileges thereunto belonging. To Have and To Hold the same unto him the said William Schley his heirs and assigns forever.

[Seal of the Land Office of Maryland.]

Given under the Great Seal of the State of Maryland, this twenty-second day of March, Eighteen hundred and sixty.

[THE GREAT SEAL.]

THOS. H. HICKS.

LAND OFFICE OF MARYLAND:

I certify that the foregoing Patent is proper to be issued. In testimony whereof I have hereunto set my hand and affixed the Seal of the Land Office of Maryland, this twenty-second day of March, Eighteen hundred and sixty.

[Seal of the Land Office of Maryland.]

WILLIAM L. W. SEABROOK.

Commissioner of the Land Office.

23 LAND OFFICE OF MARYLAND, *set*:

I hereby certify that the foregoing is a true Copy of the Patent of "the Resurvey on All the Chances" 1173½ acres, patented to William Schley 22nd March, 1860, as recorded in Liber L. M. No. 1 folio 415 &c., one of the Record Books on file in this office.

In testimony whereof, I have hereunto set my hand, and affixed the Seal of the Land Office of Maryland, this fifteenth day of July, Nineteen hundred and ten.

[Seal of the Land Office of Maryland.]

THOS. G. SMITH.

Commissioner of the Land Office.

24 [Endorsed:] Md. Exhibit A. Copy. William Schley, his Patent, "the Resurvey on All the Chances" 1173½ acres.

25 2. That under this patent the tract "Re-survey on All the Chances" was sold by Messrs. Alexander, Williams and Fisher, Trustees, March 24, 1868, to John W. Stonebreaker, as appears by a certified deed by said Alexander, Williams and Fisher, Trustees, as aforesaid, to said John W. Stonebreaker and recorded in the Land Records of Garrett County, in the State of Maryland, in Liber W. H. T. No. 1, Folio 434, etc., a certified copy of said deed being filed herewith as part hereof and marked "Maryland Exhibit B."

26 At the request of D. E. Offutt this deed was recorded the 21st day of July, 1874.

This deed, made this 26th day of June, in the year of our Lord one thousand eight hundred and seventy four, by John W. Stone-

breaker and Laura L. Stonebreaker of Washington County and State of Maryland, Witnesseth:

That in consideration of two thousand five hundred dollars, the said John W. Stonebreaker and Laura L. Stonebreaker, his wife, do grant unto Daniel E. Offutt of Garrett County and State aforesaid,

All that part of a tract of land called "The Resurvey on all the Chances," situate and lying in Garrett County and State of Maryland, and containing eleven hundred acres of land, more or less, which said number of acres, the said Daniel E. Offutt accepts as correct, and hath fully paid the purchase money for the same, the tract of land hereby sold being the same that was conveyed by Th. S. Alexander, Geo. H. Williams and Wm. A. Fisher, Trustees, to the said J. W. Stonebreaker by deed bearing date on the 24th day of March, A. D. 1868, and recorded in Liber H. R., No. 28, folio 466, one of the Land Records of Alleghany County, and by reference thereto being had will more fully appear.

Together with all rights, ways, easements and appurtenances to the said land hereby sold in any manner appertaining or belonging.

To have and to hold the said land with the appurtenances unto him, the said Daniel E. Offutt, his heirs and assigns, to his and their only proper use and behoof forever.

Witness our hands and seals on the day and year hereinbefore written.

JOHN W. STONEBREAKER. [SEAL.]
L. L. STONEBREAKER. [SEAL.]

Test:

WM. M. TICE.

STATE OF MARYLAND.

Washington County, to wit:

I hereby certify that on this 26th day of June, in the year of our Lord one thousand eight hundred and seventy four, before me, the subscriber, a Justice of the Peace of the State of Maryland, in and for the said County, personally appeared John W. Stonebreaker and Laura L. Stonebreaker, his wife, and acknowledged the foregoing deed to be their respective act.

WM. M. TICE, J. P.

27 STATE OF MARYLAND.

Washington County, to wit:

I, George B. Oswald, Clerk of the Circuit Court for Washington County, do hereby certify that Wm. M. Tice, Esq., before whom the above and annexed acknowledgments were made, and who hath thereunto subscribed his name, was at the time of so doing one of the Justices of the State of Maryland, in and for said County, duly appointed, commissioned and sworn, and that his signature is genuine.

In testimony whereof, I hereunto subscribe my name and affix

the seal of the Circuit Court aforesaid this 8th day of July, A. D. 1874.

[Seal of Court.]

GEORGE B. OSWALD, *Clerk.*

STATE OF MARYLAND,

Garrett County, to wit:

I, Edward Z. Tower, Clerk of the Circuit Court for Garrett County, in the State of Maryland, hereby certify that the above and foregoing is a true copy taken from Liber W. H. T., No. 1, folios 434, &c., one of the Land Records of Garrett County, Maryland.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Circuit Court, at Oakland, this 6th day of September, A. D. 1906.

[Seal Circuit Court, Garrett County.]

E. Z. TOWER, *Clerk.*

28 [Endorsed:] Md. Exhibit B. Certified Copy of Deed.
John W. Stonebreaker & wife to Daniel E. Offutt.

29 3. That on June 26, 1874, John W. Stonebreaker and Laura L. Stonebreaker sold and conveyed "Re-survey on All the Chances" to Daniel E. Offutt, who still owns a portion of said land. That Mr. Offutt, aforesaid, his grantors and grantees, have paid taxes continuously in the State of Maryland on this property from the time of the patent to William Schley above mentioned, and exercised all acts of ownership and possession over the same.

The inception of this title in William Schley on a special warrant from the State of Maryland dates from the issuance of the warrant because it must state the outlines to be included in the patent. In this case the warrant, as appears above, was dated September 13, 1858, and the certificate of survey was returned on June 18, 1859. According to Lieutenant Michler's report (see Record page 842), he did not reach the Fairfax Stone with his party until June 17, 1859. It is manifest, therefore that the "Re-survey on All the Chances" was surveyed prior to the running of the line by Lieutenant Michler, and also that the land on both sides of the line which the majority of the Commissioners, Messrs. Monroe and Garrett, adopted, and which is complained of by Commissioner Brown, has been held in possession under a Maryland title for upward of forty years.

The offer of the testimony and evidence of the facts and circumstances above referred to, made on behalf of the State of Maryland through Commissioner Brown, was rejected and disregarded by a majority of the Commissioners, Messrs. Monroe and Gannett, who declined to receive said testimony or any part thereof, and who proceeded to locate and mark the proposed boundary line between the end of the twenty-first line of "Re-Survey on All the Chances," (it being a stake in a stonepile identified by a witness,) and a point intersecting or bisecting the nineteenth

line of the "Re-Survey," which line the majority of the Commissioners, Messrs. Monroe and Gannett, supposed to coincide with the fourth line of a tract of land called "Kindness."

Against this action upon the majority of the Commissioners, Messrs. Monroe and Gannett, Commissioner, Mr. Brown protested and excepted. In connection with the proceedings and matters last aforesaid, attention is called to the following:

"In Camp.

SEPTEMBER 20, 1910.

Maryland-West Virginia Boundary Commission,

Julius K. Monroe, Esq., Sec'y.

DEAR SIR: "As I am creditably informed that a tract of land named "Re-Survey on All the Chances" is being held, and has been held for upward of forty years, (20 years prior to April 8th, 1890) under a Maryland title, and all rights of possession and ownership exercised over the same, I request that the Commission inquire into, and take testimony as to the State Boundary, under the Decree, at this point which lies north west of the tract called "Maryland."

Yours truly,

W. McCULLOH BROWN,

Commissioner."

31

"In Camp.

SEPTEMBER 24, 1910.

Maryland-West Virginia Boundary Commission,

Julius K. Monroe, Esq., Sec'y.

DEAR SIR: Will you please bring the following facts before the Commission, and file the same in our Record.

A Special warrant of "Re-Survey on All the Chances" was granted by the State of Maryland to William Schley on September 13, 1858. The return of the surveyor being filed on June 18th, 1859, and in due course a patent was issued. Under this patent "Re-Survey on All the Chances" was sold by Messrs. Alexander, Williams and Fisher, Trustees, March 24th, 1868, to John W. Stonebreaker. On June 26, 1874, John W. Stonebreaker and Laura L. Stonebreaker sold "Re-Survey on All the Chances" to Daniel E. Offutt, who still owns a portion of said land. Mr. Offutt, his grantors, and his grantees have paid taxes continuously in the State of Maryland on this property from the beginning, and exercised all acts of ownership and possession over the same.

"The inception of title on a Special warrant dates from the issuance of the warrant, because it must state the outlines to be included in the patent. In this case the warrant was dated September 13th, 1858, and the Certificate of Survey was returned on June 18th, 1859. According to Lieut. Michler's report (see Record page 842) he did not reach the Fairfax Stone with his party until June 17th, 1859. It is manifest therefore that the "Re-Survey on All the Chances" was surveyed prior to the running of the line by Michler, and also that the land upon both sides of the

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provisional line which we are now running, has been held in possession under Maryland title for upward of forty years.

I therefore make specific exception and protest to the permanent location and marking of any State boundary as now run upon the ground, between the end of the 21st line of 'Re-Survey on All the Chances' (it being a stake in a stone pile identified by witness), and a point intersecting or bisecting the 19th line of the Re-Survey (which line is supposed to coincide with the 4th line of a tract called 'Kindness.')

"Yours truly,

W. McCULLOH BROWN,
Commissioner."

"In Camp.

SEPTEMBER 28TH, 1910.

Maryland-West Virginia, Boundary Commission,
Julius K. Monroe, Sec'ty.

DEAR SIR: I wish to bring before the Commission, and have entered in our Record, a general exception and protest to the permanent location and marking of any line (or lines) under the direction of this Commission as the boundary between the States of Maryland and West Virginia, in such a manner as will cause the line to either besect, or cut off from the State of Maryland and those who hold and have possession under Maryland title, any appreciable area of land, no matter on what portion of the boundary it may be situated, provided the same land shall have been held under title from Maryland in uninterrupted use, possession or occupancy (to the present time) with payment of taxes in Maryland, from a period of twenty years prior to the passage by the Maryland Legislature of the Act of 1891, Chapter 563, (approved April 8th, 1890) authorizing the institution of the present suit against the State of West Virginia.

Yours truly,

W. McCULLOH BROWN,
Commissioner."

The action of the majority of the Commissioners, Messrs. Monroe and Garnett, in refusing to accede to the demands of Commissioner Brown, that testimony be taken as above stated, and that the land embraced in the tract, "Re-Survey on All the Chances" be left to remain as a part of the State of Maryland, and that the line to be run by the Commissioners be so run that said tract would remain upon the Maryland side thereof, and the action upon the part of the majority of the Commissioners, Messrs. Monroe and Gannett, running and establishing said proposed boundary line between the two States, (as it has been run and proposed to be established by them, as appears upon the plat in the proceedings filed by them) bisecting said tract "Re-Survey on All the Chances" wrongfully and unjustly deprives the State of Maryland of approximately 587 acres of land, which are held by the various persons who have been and are now voters and tax payers within the State of Maryland.

With respect to the location of the proposed boundary line between the two States at or about a part of the tract of land called "Thomas Ann," and about seventeen miles north of the Fairfax Stone, and one-half mile north of Monument No. 15, W. McCulloh Brown, Commissioner, offered to the Commissioners appointed by the Court, evidence and testimony to prove that a certain part of the tract "Thomas and Ann," was now held and had been held continuously under a Maryland title granted by the State of Maryland to William Schley, and that Josiah Moon, a citizen and resident of Maryland owns a portion of the original tract of "Thomas and Ann" surveyed by Maryland in 1774, and part of a resurvey on this tract called "Harrington Manor," and that said Moon has now under fence and in possession a triangle whose location is indicated by Red D 9 and Red D 10 on one of the plats filed by the Defendants, West Virginia, in this case, consisting of about seven acres, and that said Moon has furthermore paid taxes on this land to the State of Maryland and cut and consumed the timber on it and claims all right and title thereto. Mr. Moon appeared in the camp of the Commissioners and tendered himself as ready and willing to prove and establish the aforesaid facts. The majority of the Commissioners, Messrs. Monroe and Gannett declined to receive said testimony and evidence or any part thereof. Mr. Brown, the Commissioner, claimed that the line run by the Commissioners in accordance with the decree of the Court, should leave to the State of Maryland the said triangle and should be so run that said triangle would remain upon the east or Maryland side thereof. The majority of the Commissioners, Messrs.

35 Monroe and Gannett, denied this claim and right, and on the contrary so ran and prolonged the proposed boundary line as to cut off from the State of Maryland the said land of said Josiah Moon, thereby depriving the State of Maryland of said territory of about seven acres of land, and appropriating the same wrongfully and unjustly to the State of West Virginia.

Against said action by the majority of the Commissioners, said Commissioner Brown protested and excepted. The protest in the instance last above referred to was as follows:

"IN CAMP, October 14th, 1910.

Maryland-West Virginia, Boundary Commission,

Julius K. Monroe, Esq., Sec'y.

DEAR SIR: Please record in our Journal, my exception to the permanent location of the State Boundary in such a manner as will take from Maryland and the present owner, Josiah Moon, that portion of the original survey of "Thomas and Ann" (which was surveyed in 1774) and which Mr. Moon now pays taxes on in Maryland, and has in possession under fence.

Yours truly,

W. McCULLOH BROWN,

Commissioner."

With respect to that part of the proposed boundary line between the two States in the vicinity of a tract of land called "Border Life" lying about seventeen miles north of the Fairfax Stone and about seventh-eighth- of a mile north of Monument No. 15, and running northward adjoining the tract called "Thomas and Ann" and Military Lot- 1237, 1238, 1239, etc., Commisisoner Brown offered patents and deeds to prove that the tract called "Border Life" is a Maryland tract, patented under a warrant of survey dated the 9th day of December, 1856, to James Browning, and that he fully compounded for said land according to law. That said tract contained eighty-one and seven-eighth- acres according to the certificate of survey thereof taken and returned into the Land Office of Maryland, bearing date the 30th day of March, 1857, and that accordingly the said land was patented to the said James Browning the 28th of December, 1870, and that James Browning conveyed the same — Mecklack Browning, and by the heirs of said Browning the same was conveyed to Sylvester Rinard in 1882, and that it has since been held continuously, and full possession exercised over it under title from the date of said patent to the present time.

That the majority of the Commissioners, Messrs. Monroe and Garnett, refused to accept or receive such testimony or any of the same or to consider and entertain the request and demand of said Commissioner Brown that the same be received and considered. That thereupon said Commissioner Brown protested against and excepted to the action of said majority of the Commissioners.

That in spite of said request of said Commissioner Brown and his protests and exceptions aforesaid, and in dis-regard of the

37 same, the majority of the Commissioners, Messrs. Monroe and Gannett proceeded to run and prolong said line so as to throw this tract entirely within the State of West Virginia, running and prolonging the line to the east thereof instead of to the west thereof so as to permit said territory to remain as a part of the domain of the State of Maryland. Whereby the said Commissioners wrongfully deprived the State of Maryland by said act of said tract of West Virginia, to the wrongful injury and detriment of the State of Maryland. With respect to this, Mr. Brown entered and filed the following protest:

"IN CAMP, October 14th, 1910.

Maryland-West Virginia, Boundary Commission,
Julius M. Monroe, Esq., Sec'y.

DEAR SIR: I learn that our provisional line as now being run north from Clovers Hill, has run east of a tract of land patented by Maryland to James Browning called 'Border Life' which tract calls distinctly for an old State line upon its western border, in the following terms. 'Beginning for the same on the line dividing the State of Maryland from the State of Virginia, and at the end of the second line of a tract of land called 'Browning Manor,' and running thence with and binding on the said line dividing the State of Maryland from the State of Virginia, South 1320 perches to the tract of land

called 'Thomas and Ann,' surveyed for Thomas Johnson the 9th day of April, 1774, then with the said tract," etc.

I take exception therefore to our present Line, and request that such testimony or surveys be made as will establish the old line referred to in the above patents.

Yours truly,

W. McCULLOH BROWN,

Commissioner."

38 There was offered to the Commissioners a certified copy of the patent aforesaid of said tract "Border Life" to James Browning marked as follows, "Maryland Exhibit C," to prove the contention of said Commissioner Brown.

W. McCulloh Brown, Commissioner, offered to the Commissioners appointed by the Court, "to run, locate and establish the boundary line between the two States" the following evidence and testimony to-wit:

39 James Browning, His Patent "Border Life" 81 $\frac{7}{8}$ Acres.

The State of Maryland to all persons to whom these presents shall come. Greeting:

Know Ye, that whereas James Browning of Allegany County, had surveyed and laid out for him, a tract or parcel of land called "Border Life," lying in the County aforesaid, and containing eighty-one and seven-eighths acres, by virtue of a Common Warrant for one acre, obtained by him from the Land Office of Maryland, bearing date the 9th day of December, 1856, as appears, and he having fully compounded for the said land according to law.

The State of Maryland, doth, therefore hereby Grant unto him the said James Browning, the said tract or parcel of land called "Border Life," lying in Allegany County aforesaid.

Beginning for the same, on the line dividing the State of Maryland from the State of Virginia and at the end of the second line of a tract of land called "Brownings Manor," resurveyed for Mes-hac Browning, the 22nd day of November, 1853, and running thence with and binding on the said line dividing the State of Maryland from the State of Virginia, (1) South thirteen hundred and twenty (1320) perches to the tract of land called "Thomas and Ann," surveyed for Thomas Johnson, the 9th day of April, 1774, then with this said tract (2) North 28° east, twenty-three perches, to Lot No. 1237, and with it and also with the Western Range of Lots Nos. 1238, 1239, 1241, 1243 and 1245, (3) North five hundred and eighty-two (582) perches, to the Beginning of a tract of land called "Decapolis," resurveyed for Henry M. Fitzhugh, June 10th, 1853, and with the last line of this said tract reversed, (4) North seven hundred and eighteen (718) perches, to the third line of the said tract called "Brownings Manor" and
40 reversing this said third line, (5) West, ten perches to the beginning.

Containing Eighty-one and seven-eighths acres, according to the Certificate of Survey thereof, taken and returned into the Land

Office, bearing date the 30th day of March, 1857, and there remaining, together with all rights, profits, benefits and privileges thereunto belonging. To Have and To Hold the same unto him the said James Browning, his heirs and assigns forever.

Given under the Great Seal of the State of Maryland this 28th day of December, 1870.

[The Great Seal.]

ODEN BOWIE.

LAND OFFICE OF MARYLAND:

I certify that the foregoing Patent is proper to be issued. In testimony whereof, I have hereunto set my hand and affixed the Seal of the Land Office of Maryland, this 28th day of December, 1870.

[The Land Office of Maryland.]

WM. R. HAYWARD,
Com'r of Land Office.

LAND OFFICE OF MARYLAND, *set:*

I hereby certify that the foregoing is a true Copy of the Patent of "Border Life" 817 $\frac{1}{8}$ acres, patented to James Browning 28th Dec. 1870, as recorded in Liber W. L. W. S. No. 2 folio 504 &c., one of the Record Books on file in this office.

In testimony whereof I have hereunto set my hand and affixed the Seal of the Land Office of Maryland this 15th day of October, nineteen hundred and ten.

[Seal of the Land Office of Maryland.]

THOMAS A. SMITH,
Commissioner of the Land Office.

41 [Endorsed:] Md. Exhibit C. Copy. James Browning, his Patent of "Border Life" 817 $\frac{1}{8}$ acres.

42 And also the following abstracts of deeds last referred to are filed herewith as part hereof, to-wit:

"Deed by Sylvester Rinard to Norman B. Nethkin, E. Z. T. No. 34 fol. 594, Oct. 15, 1897.

Marked Maryland Exhibit "C C."

43 At the request of Norman B. Nethkin this deed was recorded October 25th, 1898, at 2 o'clock P. M.

This deed, made this 15th day of October, in the year one thousand eight hundred and ninety seven, between Sylvester Rinard and Mary C. Rinard, his wife, both of Terra Alta, W. Va., the grantors, and Norman B. Nethken, of Huttons, Md., the grantee, Witnesseth:

That in consideration of One Hundred and Forty Dollars, in hand paid, the receipt of which is hereby acknowledged, the said grantors

do grant with covenants of general warranty, unto the grantee, all of a certain tract of land situate in — District, County of Garrett and State of Maryland, on the waters — Herring Creek, adjoining lands of J. A. Connell, Jesse Severe, Sylvester Rinard and the State Line, and bounded as follows, to wit:

Beginning at a stone pile on the State Line between West Virginia and Maryland, thence North 82° E., $38\frac{1}{4}$ perches to a stone pile, thence North 28° E., 70 perches to a stone planted, thence North $75\frac{1}{2}$ perches, thence West $73\frac{1}{2}$ perches to the State Line between West Va., and Maryland, thence South with said State Line 113 perches to the place of beginning, containing Fifty acres, more or less, being a part of the same tract of land that was conveyed to the said grantors by James M. A. Kelley and others, deed now of record in Deed Book No. 61, page 430, of the Records of said County of Garrett.

Witness the following signatures and seals the day and year first aforesaid.

SYLVESTER RINARD. [SEAL.]
MARY C. RINARD. [SEAL.]

Attest:

O. C. CRANE.

STATE OF WEST VIRGINIA,

County of Preston, to wit:

I, O. C. Crane, a Notary Public of said County, do certify, that Sylvester Rinard and Mary C. Rinard, his wife, whose names are signed to the writing above, bearing date the 15th day of October, 1897, have this day acknowledged the same, before me, in my said County.

Given under my hand this 17th day of November, 1897.

[SEAL.]

O. C. CRANE,
Notary Public.

44 STATE OF MARYLAND,

Garrett County, to wit:

I, Edward Z. Tower, Clerk of the Circuit Court for Garrett County, in the State of Maryland, hereby certify that the above and foregoing is a true copy taken from Liber E. Z. T., No. 34, folio 594, &c., one of the Land Records of Garrett County, Maryland.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Circuit Court, at Oakland, this 24th day of October, A. D. 1911.

[Seal Circuit Court, Garrett County.]

E. Z. TOWER, *Clerk.*

45 [Endorsed:] Md. Exhibit "C.C." Certified copy of deed from Sylvester Rinard & wife to Norman B. Nethken.

46 Beginning at a stone pile on the State Line between West Virginia and Maryland thence

(1) N. 82 E. $38\frac{1}{4}$ perches to a stone pile, thence

(2) N. 28 E. 70 perches to a stone planted *m* thence

(3) N. $75\frac{1}{2}$ perches; thence

(4) W. $73\frac{1}{2}$ perches, to the State Line between West Virginia and Maryland, thence,

(5) S. with State Line 113 perches to the place of beginning, cont. 50 acres.

Being a part of the same tract of land that was conveyed to the said grantors by James M. A. Kelly and others, deed now on record in Deed Book No. 61, page 430 of the Record of said Garrett County.

47

VII.

When the Commissioners, in the course of the survey of the proposed boundary line between the two States arrived at the tract of land called "Browning Manor," about one thousand feet north of the Monument No. 16, and about twenty miles north of the Fairfax Stone, Mr. Brown, Commissioner, requested that the Commission receive testimony with respect to the proper location of the line at said point, in accordance with the decree of the Court, and offered the following testimony to-wit:

That "Browning Manor" was surveyed under a warrant of survey issued by the State of Maryland, dated March 6th 1853, and that subsequently the surveyor's certificate was returned on the 22d day of November, 1853, and that said tract was in due course patented on February 24, 1857, to Meshack Browning, and by his heirs conveyed to Sylvester Rinard by deed dated May 24, 1882, and recorded among the Land Record- of Garrett County in Liber W. H. T. No. 6, folio 430, etc. The description of said land, which contains about 860 acres, as set forth in said deed being of the following tenor, to-wit:

"Deed Richard T. Browning, attorney in fact for heirs to Sylvester Rinard, May 24, 1882.

Recorded W. H. T. No. 6, fol. 430."

Abstract: Witnesseth that for and in consideration of the sum of Two-thousand, Five-hundred and eighty dollars in hand paid by the party of the second part, etc., All that part of a tract of land called "Browning Manor, and also a part of a tract of land called "Border Life" of which the said Meshach Browning deceased, died seized and possessed, lying and being in Garrett County and State of

48 Maryland, and contained within the following metes and bounds and courses and distances to-wit:

Beginning for the same at a large stone pile at the end of $38\frac{1}{4}$ perches on the fourth line of a tract of land called "Thomas and Ann" and on the line dividing the State of West Virginia from the State of Maryland where it crosses the said fourth line of said tract of land called "Thomas and Ann" and running thence reversing it and part of the third line thereof.

(1) N. 82° E. $38\frac{1}{4}$ perches;

(2) N. 28° E. 70 perches to a planted stone marked 'b' standing at the end of the first line of Military Lot 1237 and running thence with the second line thereof, and with the first line of each of Military Lots numbers 1238, 1239, 1243 and 1245;

(3) N. 582 perches to the beginning of a tract of land called 'Decapolis' and reversing the last line thereof;

(4) N. 826 perches then still;

(5) N. $4\frac{1}{2}$ perches to the 3d line of Military Lot No. 1282 and reversing it and the 2d line thereof, and running with the second and part of the third line of Military Lot No. 1284;

(6) W. 3 perches;

(7) N. 160 perches

(8) E. 68 perches to the 10th line of the whole tract called 'Browning Manor' and with it;

(9) N. 100 perches, then with the 11th line thereof extended;

(10) W. 60 perches,

(11) N. 81 perches.

(12) W. 77 perches to a stake standing on the aforesaid line dividing the State of West Virginia from the State of Maryland and with said line South — perches to the beginning containing 860 acres.

49 And furthermore, said Commissioner Brown offered to prove that said tract had been in uninterrupted use and possession under the Maryland title as a part of territory of the State of Maryland, and that said owners paid taxes thereon to the Treasurer of Garrett County and to the State of Maryland.

But the majority of said Commissioners, Messrs. Monroe and Gannett, refused to receive said proffer of said testimony or any part thereof and declined to consider said offer or the request of said Commissioner Brown that such testimony be taken, received and considered. To which decision and action upon majority of said commissioners, said Commissioner Brown protested and excepted thereto.

And said majority of said Commissioners in spite of the protests and obligations of said Commissioner Brown, proceeded to run and prolong said boundary line so as to bisect said tract of land, "Browning Manor" aforesaid and to throw a portion of it, including almost the whole thereof, into the State of West Virginia, thereby wrongfully and unjustly depriving the State of Maryland of upward of seven-hundred acres of territory to which it is entitled and appropriating the same, to-wit, said "Browning Manor" to the State of West Virginia.

And further, in connection with the proceedings aforesaid, it is submitted that certain citizens and residents of the State of Maryland, owners and occupants of the lands last above referred to, including Messrs. William H. Lewis, F. O. Friend and W. S. Collins appeared in person before the Commissioners and requested and pleaded that the State Line be so run as to permit their lands, as aforesaid, to remain within the State of Maryland, and offered to exhibit their deeds, give proof of their occupancy of said lands and of their allegiance to the State of Maryland. All of which, however,

was rejected and disregarded by the majority of the Commissioners, Messrs. Monroe and Gannett.

And further in connection with the same, the following protests were entered by Commissioner Brown, to-wit:

"In Camp.

OCTOBER 14, 1910.

Maryland-West Virginia Boundary Commissioner,
Julius K. Monroe, Esq., Sec't'y.

DEAR SIR: I request that the Commission take necessary testimony and make such surveys as are required to correctly locate the old State Boundary Line as described in the patent called 'Browning Manor' surveyed for Meshack Browning, March 26th, 1853, and the tract called 'Border Life' surveyed for James Browning, March 30, 1857, both of which tracts call for points in the line dividing the State of Maryland from the State of Virginia.

The Maryland patentees and their assigns have been, and are now paying taxes in Maryland, and are giving allegiance to her, in peaceable possession.

Yours truly,

W. McCULLOH BROWN,
Commissioner."

"In Camp.

OCTOBER 14, 1910.

Maryland-West Virginia Boundary Commission,
Julius K. Monroe, Esq., Sec't'y.

DEAR SIR: I wish to record my exception and protest to the permanent location and marking of the State Boundary east of the tract of land called "Browning Manor" which tract calls on its western border, "For the Virginia Line, and with and bounded on said line, South 860 perches," or to the running of a line which will bisect said tract. "Browning Manor" is held in undisputed possession under Maryland title, by actual residents, who are paying taxes and giving allegiance to the former State.

Yours truly,

W. McCULLOH BROWN,
Commissioner."

The attention of the Court is respectfully called to the certificates attached to this report, which shows that Albert Shahan, Wm. H. Lewis, F. Orval Friend, Wm. S. Collins, Mrs. Ella Teets, Eugene Teets, are paying taxes in the State of Maryland on portions of "Browning Manor," and are in possession of same.

The lands and possessions here referred to lie west of the "Pine Swamp," and between Monument Nos. 17 and 18, and west of Military Lot, 1282, shown upon the Map. Respecting these matters, Commissioner Brown filed the following:

"In Camp.

OCTOBER 18, 1910.

Maryland-West Virginia Boundary Commission,

Julius K. Monroe, Esq., Sec'y.

DEAR SIR: Please record in our Record of Survey my exceptions and protests, to the permanent location and marking of the State Boundary Line east of, or, in a manner to bisect the lands of the following owners of parts of the tracts of "Home" and of "Browning Manor" both of which tracts call for the "Maryland and Virginia Line" upon their western border, and not to the east.

52 Albert Shahan, Tenant Wm. Lawson,
Wm. H. Lewis.

F. O. Friend.

Wm. S. Collins.

Mrs. John Teets, (Ella B. Teets).

Eugene Teets.

These parties are assessed for this land in Garrett County, pay taxes there, and up to the present vote and give allegiance to Maryland. Albert Shahan only being a non-resident.

Yours truly,

W. McCULLOH BROWN,

Commissioner."

And furthermore in connection with the matters last described, is filed herewith as part hereof patent Browning's Manor, marked "Maryland Exhibit D."

W. McCulloh Brown, Commissioner, also offered to the Commissioners appointed by the Court, "to run, locate and establish the boundary line between the two States," the following evidence and testimony to wit:

Deed Robert T. Browning, Att'y In fact to Sylvester Rinard, Marked Md. Exhibit "DD."

Deed Lemly Wilson and wife to Orval Friend, Marked Md. Exhibit "D 3."

Deed D. E. Offutt to Albert Shahan, Marked Md. Exhibit "D 4."

Deed Peter Sims and wife to William H. Lewis, Marked Md. Exhibit "D 5."

53 Meshack Browning, His Patent, "Browning's Manor," 768 1/4 Acres.

The State of Maryland to all persons to whom these presents shall come, Greeting:

Know Ye that whereas Meshack Browning of Allegany County on the twenty-sixth day of March, Eighteen hundred and fifty-three obtained out of the Land Office of the Western Shore a Special Warrant to Resurvey a tract or parcel of land called "Home" with liberty of correcting errors adding any contiguous vacancy and of reducing the whole into one entire tract. In pursuance whereof a resurvey was made of said land and the same was found to contain

the quantity of one hundred and ninety and a quarter acres to which was added the quantity of five hundred and seventy eight acres of vacant land making in the whole the quantity of seven hundred and sixty-eight and a quarter acres and called "Browning's Manor" for which vacancy the said Meshack Browning compounded according to law.

The State of Maryland, doth therefore hereby Grant and Confirm unto him the said Meshack Browning the said tract of land with the vacancy added and called "Browning's Manor" lying in Allegany County aforesaid.

Beginning for the out lines of the whole at two hemlock saplings marked with three notches and running thence West ten perches to the Virginia line and with and bounding on said line South eight hundred and sixty perches then leaving said line East sixty perches, North sixty perches, East one hundred and twenty perches to a tract of land called "Disperse" then North sixty perches, then West eighty perches, North one hundred and sixty perches, North forty-eight degrees East one hundred and eight perches to the aforesaid tract of land called "Disperse" North three hundred and thirty-three and a half perches to the second line of a tract of land called "Scales" and with this line West fifty perches to the end of the

54 third line of the original and with it reversed North one hundred and seventy-three and a half perches to the beginning thereof then reversing the second line thereof West one hundred and twenty perches to the beginning.

Containing Seven hundred and sixty-eight and a quarter acres of land according to the Certificate of Resurvey thereof taken and returned into the Land Office bearing date the twenty-second day of November, Eighteen hundred and fifty-three and there remaining together with all rights, profits, benefits and privileges thereunto belonging. To Have and To Hold the same to him the said Meshack Browning his heirs and assigns forever.

Given under the Great Seal of the State of Maryland this twenty-fourth day of February, Eighteen hundred and fifty-seven.

[Seal of the Land Office of Maryland.]

T. W. LIGON. [THE GREAT SEAL.]

LAND OFFICE OF MARYLAND:

I certify that the foregoing Patent is proper to be issued. In testimony whereof I hereto set my hand and affix the Seal of the Land Office of Maryland, this twenty-fourth day of February, Eighteen hundred and fifty-seven.

[Land Office of Maryland.]

JAMES MURRAY,
Com'r of the L'd Office.

55 LAND OFFICE OF MARYLAND, *set:*

I hereby certify that the foregoing is a true Copy of the Patent of "Browning's Manor" 768 $\frac{1}{4}$ acres, patented to Meshack Browning

24th Feb. 1857, as recorded in Liber G. G. B. No. 8, folio 512, &c., one of the Record Books on file in this office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Land Office of Maryland, this seventeenth day of October, Nineteen hundred and ten.

[Seal of the Land Office of Maryland.]

THOMAS G. SMITH,
Commissioner of the Land Office.

56 [Endorsed:] Md. Exhibit D. Copy. Meshack Browning, his Patent, "Browning's Manor," 768 $\frac{1}{4}$ acres.

57 Those holding under the several Browning titles from Monument No. 15: 3300 feet, to near Monument No. 19 are James S. Lakin, John Stewart, Lakin & Offutt, Albert Shahan, Lee Groves, Wm. H. Lewis, F. Orval Friend, Wm. S. Collins, Mrs. John Teets, Eugene Teets, and Hiram Ringer.

Lewis, Friend, John Teets and Eugene Teets were voters in Maryland.

In this connection the following abstracts from deeds were offered to the Commissioners, as follows, to-wit:

Deed D. E. Offutt, Jas. E. Lakin and others to Albert Shahan, E. Z. T. No. 49, fol. 174, Feb. 7, 1905. Tax title also confirmed by Sylvester Rinard by Deed E. Z. T. No. 49 fol. 211 Mar. 17, 1905.

"Part of 'Browning Manor'?"

Described as follows, to-wit: bounded on the west by the Maryland West Virginia State Line, on the north by the lands of Joseph T. Lewis and on the south by the lands of the grantee, and the bearings and distances of the lines being about as follows:

Beginning at the southwest corner of a tract via line of the grantee's land, and with said line.

(1) N. 48° E. 105 $\frac{1}{2}$ perches; thence.

(2) N. 3° E. 42 perches to W. H. Lewis' corner; thence

(3) With his line W. 71 perches thence.

(4) N. 3° E. 102 perches to the beginning Containing thirty four acres.

Being the same property which was purchased by grantor at the tax sale February 27, 1901, and deed recorded E. Z. T. No. 44 fol. 536.

Deed Sylvester Rinard and wife to John G. Elsey, October 6th 1893, recorded E. Z. T. No. 22 fol. 441 land from Browning Heirs, deed of 1882, May 24.

58 Beginning at a stake and stone pile on the (new) Maryland and West Virginia State Line, a corner to said grantee, thence with said line S. 3° W. 210 perches to a pine on the south bank of Hoy's Run, thence E. 77 perches to a stake and pts., thence N. 3° 24 $\frac{1}{2}$ perches to stake thence S. 87° E. 68 perches to a stake, thence N. 1 W. 100 perches, crossing dam to a stake, thence N. 87° W. 60 perches recrossing dam to a stake, thence N. 3° E. 81 perches

to a stake, thence, N. 87° W. 77 perches to the beginning, containing 139 acres.

59 Deed Lemley Wilson and wife to Orval Friend, December 20, 1902, recorded E. Z. T. No. 46 fol. 207.

Land situate in — District, Garrett County and State of Maryland, on the waters of White Oak, Spring Run, adjoining lands of J. G. Elsey, David Wilson and William Lewis and others and bounded as follows, to-wit:

Beginning for the same at a hemlock tree standing in the boundary line between the State of West Virginia and Maryland and marked with notches on the bank of Hoy's Run and running thence.

(1) S. 3° W. 104 p-ches to the beginning of the piece of land sold to Peter Sims, thence.

(2) With the line of Sims' land E. 77 perches; thence

(3) N. 3° E. 104 perches to a stake; thence

(4) W. 77 perches to the place of beginning, containing 50 acres.

Abstract of Deed, Lemley Wilson and wife to Orval Friend, recorded Book E. Z. T. No. 46, fol. 207, one of the Land Records of Garrett County, Maryland.

60 This deed made the 20th day of December, in the year 1902 between Lemley Wilson and Nellie Wilson, his wife, of Garrett County Maryland, the Grantors, and Orval Friend, of Portland District, Preston County, West Virginia, the grantee

Witnesseth: That in consideration of nine-hundred and twenty-five dollars, three hundred dollars in hand paid, the receipt of which is hereby acknowledged * * * Notes follow. * * *

The said Grantors do grant with covenant of Special Warrant unto the said Grantee all of a certain tract of land situate in County of Garrett and State of Maryland, on the waters of White Oak Spring Run adjoining lands of J. G. Elsey, David Wilson and William Lewis, and others, and bounded as follows, to-wit:

Beginning for the same at a hemlock tree standing in the boundary line between the State of West Virginia and the State of Maryland and marked with notches on the bank of Hoy's Run, and running thence, S. 3° E. 104 perches to the beginning of the piece of land sold to Peter Sims, thence with the line of Sims' land E. 77 perches, thence N. 3° E. 104 perches, to a stake, thence W. 77 perches, to the place of beginning, and the same lot of ground that was conveyed to the said Lemley Wilson by deed from George W. Stiles and wife, dated the 10th day of August, 1901, containing 50 acres, more or less, being the same land that was conveyed to the said Grantor by George W. Stiles and Martha Stiles, his wife, by deed now of record in Deed Book No. 44 fol. 280 of the Records of Garrett County, Maryland.

Witnesseth the following signatures and seals the day and year first aforesaid.

61

LEMLEY WILSON. [SEAL.]

NELLIE WILSON. [SEAL.]

GEORGE W. STILES. [SEAL.]

MARTHA STILES. [SEAL.]

"Acknowledged before Notary Public of the State of West Virginia, with seal attached."

Also Deed

To William H. Lewis from Peter Sims, 40 acres E. Z. T. No. 42 fol. 542 March 18, 1896.

All that lot of ground situated, lying and being in Garrett County Maryland, which is described as follows, to-wit:—

Beginning for the same at the end of the first line of a tract of land sold by Sylvester Rinard and wife to William Wilhelm at a point designated on the Maryland and West Virginia boundary line, and running thence,

- (1) S. 3° W. 82 perches on the aforesaid boundary line, thence,
- (2) E. 80 perches; thence,
- (3) N. 3° E. 50 perches, thence,
- (4) W. 3 perches; thence,
- (5) N. 3° E. 32 perches to a stake; thence,
- (6) E. (should be W.) 77 perches to the beginning containing 40 acres.

62 D. E. Offutt, et al. to Albert Shahan, 34 acres, E. Z. T. No. 49, fol. 174, February 7, 1905.

Part of Browning Manor.

63 At the request of Gilmer S. Hamill this deed was recorded February 20th 1905 at 12 o'clock M.

This deed, made the 7th day of February, 1905, by and between D. E. Offutt and Belle Offutt, his wife, of Oakland, Garrett County, Maryland, and James S. Lakin and Lou O. Lakin his wife, W. M. Bishop and Ida E. Bishop, his wife, and Parley De Berry and Anna E. De Berry, his wife, all of Terra Alta, Preston County, West Va., the Grantors, and Albert Shahan, the Grantee, Witnesseth:

That for and in consideration of One Hundred Dollars (\$100) cash in hand paid, the receipt of which is hereby acknowledged, said parties of the first part do hereby grant, bargain, sell & convey, unto said party of the second part;

All of their right, title and interest, in and to the following real estate, situate, lying and being in the County of Garrett, and State of Maryland, and bounded and described as follows, to-wit: On the West by the Maryland and West Virginia State Line; on the North by land of W. H. Lewis; on the East by land of Jos. F. Lewis, and on the South by lands of the Grantee, and the bearings and distances of the lines being about as follows: Beginning at the Southwest corner of the tract in a line of the Grantee's land, and with said line, N. 48° E., 105½ poles, thence N. 3° E., 42 poles to W. H. Lewis' corner, thence with his line, West 71 poles, thence 3° E., 102 poles to the beginning, containing Thirty-four acres (34), more or less, it being part of the same real estate that was purchased by the Grantors herein at the front door of the Court-house, in Oakland, Garrett County, Maryland, on the 27th day of February, 1901, and that was deeded to them by Thomas B. Wiley, Late Treasurer of Garrett

County, Maryland, by deed bearing date the 17th day of April, 1903, and recorded in Liber E. Z. T., No. 44, folios 536 &c., one of the Land Records of Garrett County, Maryland.

The said grantors covenant that they will warrant specially all their right, title and interest in and to the property hereby conveyed.

Witness the following signatures and seals.

G. A. FRALEY,	D. E. OFFUTT.	[SEAL.]
As to signatures of D. E. Offutt	BELLE OFFUTT.	[SEAL.]
and Belle Offutt.		

64 W. T. WHITE,	JAMES S. LAKIN.	[SEAL.]
As to signatures of Jas.	LOU O. LAKIN.	[SEAL.]
S. Larkin, Lou O.	W. M. BISHOP.	[SEAL.]
Larkin, W. M. Bish-	IDA E. BISHOP.	[SEAL.]
op, Ida E. Bishop,	PARLEY DE BERRY.	[SEAL.]
Parley De Berry,	ANNA E. DE BERRY.	[SEAL.]
Anna E. De Berry.		

STATE OF MARYLAND,

County of Garrett, To wit:

I, G. A. Fraley, a Notary Public in and for the County aforesaid, do hereby certify that D. E. Offutt and Belle Offutt, his wife, whose names are signed to the writing above bearing date the 7th day of February, 1905, have each acknowledged the same before me, in my said County of Garrett.

Given under my hand and Notarial Seal this, the 9- day of February, 1905.

[SEAL OF NOTARY.]

G. A. FRALEY,
Notary Public.

STATE OF WEST VIRGINIA,

County of Preston, To wit:

I, W. T. White, a Notary Public in and for the County aforesaid, do hereby certify that James S. Lakin and Lou O. Lakin, his wife, W. M. Bishop and Ida E. Bishop, his wife, Parley De Berry and Anna E. De Berry, his wife, whose names are signed to the writing above bearing date the 7th day of February, 1905, have each acknowledged the same before me, in my said County of Preston.

Given under my hand and seal this, the 14th day of Feb., 1905.

[SEAL OF NOTARY.]

W. T. WHITE,
Notary Public.

65 STATE OF MARYLAND,

Garrett County, To wit:

I, Edward Z. Tower, Clerk of the Circuit Court for Garrett County, in the State of Maryland, hereby certify that the above and foregoing is a true copy taken from Liber E. Z. T., No. 49, folio 174 &c., one of the Land Records of Garrett County, Maryland.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Circuit Court, at Oakland, this 25th day of October, A. D. 1911.

E. Z. TOWER, *Clerk.*

[Seal Circuit Court, Garrett County.]

66 [Endorsed:] Md. Exhibit "D 4." Certified Copy of Deed from D. E. Offutt & others to Albert Shahan.

67 Md. EXHIBIT "D-5."

Peter Sines & Wife
to
William H. Lewis.

E. Z. T., No. 42, Fol. 542. March 18, 1896.

"Browning Manor."

68 At the request of William R. Offutt this deed was recorded December 19th 1902 at 3.30 o'clock P. M.

This deed, made this eighteenth day of March, in the year one thousand eight hundred and ninety six, by and between Peter Sines and Ella E. Sines, his wife, of Garrett County, in the State of Maryland, parties of the first part, and William H. Lewis, of Garrett County, in the State of Maryland, party of the second part, Witnesseth:

That for and in consideration of the sum of One hundred and twenty-five dollars, lawful money of the United States of America, well and truly paid by the said party of the second part to the said parties of the first part, the receipt whereof is hereby acknowledged, the said parties of the first part have granted, bargained and sold, and by these presents do grant, bargain, sell and convey, unto the said party of the second part, his heirs and assigns;

All that lot of ground situated, lying and being in Garrett County, Maryland, which is described as follows, to wit: Beginning for the same at the end of the first line of a tract of land sold by Sylvester Rinard and wife to William Wilhelm at a point designated on the Maryland and West Virginia bound-ry line, and running thence South 3° West, 82 perches to the aforesaid bound-ry line, thence East 80 perches, thence North 3° East, 50 perches, thence West 3 perches, thence North 3° East, 32 perches to a stake, thence East Elliott

(should read West) 77 perches to the beginning, and containing the quantity of Forty acres of land, more or less. This being the same land that was conveyed by Sylvester Rinard and wife to Peter Sines, by deed dated April 22nd eighteen hundred and ninety five, and recorded in Liber E. Z. T., No. 26, folio 577 &c., one of the Land Records of Garrett County, Maryland.

Together with the buildings and improvements thereon, and the

rights, roads, ways, waters, privileges and appurtenances thereunto belonging or in any wise appertaining. Except 20 feet for the right of way of Offut-, Laken & Rinard's tramroad, where said road is now located.

To have and to hold the above granted property, with all and singular the appurtenances thereto belonging, unto the said William H. Lewis, his heirs and assigns, forever in fee simple.

69 And the said parties of the first part covenant that they will warrant specially the property hereby granted and conveyed, and that they will execute such other and further assurances of said land as may be requisite.

Witness our hands and seals the day and year first above written.

PETER SINES. [SEAL.]
ELLA E. SINES. [SEAL.]

Witness:

JOHN A. GRAHAM.
SIDNEY SPIKER.

STATE OF MARYLAND,

Garrett County, To wit:

I hereby certify, that on this eighteenth day of March, in the year one thousand eight hundred and ninety six, before me, the subscriber, a Justice of the Peace of the State of Maryland, in and for Garrett County, personally appeared Peter Sines and Ella E. Sines, his wife, and did each acknowledge the foregoing deed to be their respective act.

In testimony whereof, I hereunto set my hand and official seal this 18th day of March, A. D., 1896.

H. B. LEWIS, J. P.

STATE OF MARYLAND,

Garrett County, To wit:

I, Edward Z. Tower, Clerk of the Circuit Court for Garrett County, in the State of Maryland, hereby certify that the above and foregoing is a true copy taken from Liber E. Z. T., No. 42, folio 542, one of the Land Records of Garrett County, Maryland.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Circuit Court, at Oakland, this 25th day of October, A. D., 1911.

[Seal Circuit Court, Garrett County.]

E. Z. TOWER, Clerk.

71 Md. EXHIBIT "D-3."

Lemel Wilson & Wife
to
Orval Friend.

E. Z. T. No. 46, Folio 207. December 20th, 1902.

"Browning's Manor."

72 At the request of Orval Friend this deed was recorded October 7th 1903 at 11 o'clock A. M.

This deed, made this 20th day of December, in the year one thousand nine hundred and two, between Lemley Wilson and Nellie Wilson, his wife, of Garrett County, Md., the grantors, and Orval Friend, of Portland District, Preston County, West Virginia, the grantee, Witnesseth:

That in consideration of Nine hundred and twenty-five dollars, Three hundred dollars in hand paid, the receipt of which is hereby acknowledged, and Six hundred and twenty-five dollars to be paid as follows: One hundred dollars, May 1st 1903; One hundred dollars, May the first 1904; One hundred dollars, May the first 1905; One hundred dollars, May the first 1906; One hundred dollars, May the first 1907; One hundred and twenty-five dollars, May the first 1908, with interest, and the said grantor do hereby retain a lien on the said land that is hereby conveyed to the said grantee for the deferred payments of the purchase money of Six hundred and twenty-five dollars above mentioned: the said grantors do grant with covenants of special warranty, unto the said grantee;

All of a certain tract of land situate in — District, County of Garrett, and State of Maryland, on the waters of White Oak Spring Run, adjoining lands of J. G. Elsey, David Wilson and Wm. Lewis and others, and bounded as follows, to wit: Beginning for the same at a hemlock tree standing in the bound-ry line between the State of West Virginia and Maryland and marked with notches, on the bank of Hoy's Run, and running thence South 3 degrees West, 104 perches to the beginning of the piece of land sold to Peter Sines, thence with the line of Sine's land, East 77 perches, thence North 3 degrees East, 104 perches to a stake, thence West 77 perches to the place of beginning, and — the same lot of ground that was conveyed to the said Lemley Wilson by deed from George W. Stiles and wife, dated the 10th day of August, 1901, nineteen hundred and one, containing Fifty acres, more or less; being the same land that was conveyed by George W. Stiles and Martha Stiles, his wife, by deed now of record in Deed Book No. 44, folio 280 &c., page —, of the Records of Garrett County of Maryland.

Witness the following signatures and seals the day and year

73 first aforesaid.

LEMLEY WILSON.	[SEAL.]
NELLIE WILSON.	[SEAL.]
GEO. W. STILES.	[SEAL.]
MARTHA STILES.	[SEAL.]

STATE OF WEST VIRGINIA,

County of Mono-galia, To wit:

I, J. M. Weese, a Notary Public of said County, do certify that George W. Stiles and his wife, Martha Stiles, and whose names are signed to the writing above bearing date the 20th day of December, 1902, have this day acknowledged the same before me, in my said County.

Given under my hand this 27 day of April, 1903.

[SEAL OF NOTARY.]

J. M. WEESE,
Notary Public.

STATE OF WEST VIRGINIA,

County of Preston, To wit:

I, McClellan Hoffman, a Notary Public of said County, do certify that Lemley Wilson and Nellie Wilson, his wife, whose names are signed to the writing above bearing date the 20 day of December, 1902, hath this day acknowledged the same before me, in my said County.

Given under my hand this 2nd day of May, 1903.

[SEAL OF NOTARY.]

McCLELLAN HARTMAN.

STATE OF MARYLAND,

Garrett County, To wit:

I, Edward Z. Tower, Clerk of the Circuit Court for Garrett County, in the State of Maryland, hereby certify that the above and foregoing is a true copy taken from Liber E. Z. T., No. 46, folio 207 &c., one of the Land Records of Garrett County, Maryland.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Circuit Court, at Oakland, this 25th day of October, A. D., 1911.

[Seal Circuit Court, Garrett County.]

E. Z. TOWER, Clerk.

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MD. EXHIBIT "DD."

R. F. Browning, Attorney,
to
Sylvester Rinard.

860 Acres.

W. H. T. No. 6, Fol. 430, May 24, 1882.

"Browning Manor" and "Border Life."

76

At the request of Sylvester Rinard the following deed and letters were recorded May 31st, 1882, at 3 o'clock P. M.

This deed, made this 24th day of May, in the year eighteen hundred and eighty two, by Joseph M. A. Kelley, Mary Dewitt and Archibald Dewitt, her husband, William Browning and Mary Browning, his wife, John T. Browning and Florence Browning, his wife, Louisa C. Frantz and Joseph F. Frantz, her husband, Edward A. Browning, Nathan C. Browning, George D. Browning, John L. Browning, Nancy Kitzmiller and John Kitzmiller, her husband, James Browning and Esmena Browning, his wife, Thomas Browning and Susan Browning, his wife, Jeremiah Browning and Mary Browning, his wife, Harriet Bray and William Bray, her husband, Mary Chisholm, Rebecca Chisholm and John Chisholm, her husband, Norman B. Nethkin, Catharine Rabbitt and Bartley Rabbitt, her husband, Louisa Gilpin and Charles Gilpin, her husband, Jennie Boyd and H. P. Boyd, her husband, Francis Nethkin, Alfred Nethkin, Thomas A. Nethkin, Louisa Fleegle and Samuel Fleegle, her husband, Sarah A. Browning and Reuben M. Browning, Joseph M. A. Browning and Hannah J. Browning, by Richard T. Browning, their attorney in fact, Richard T. Browning and Hattie C. Browning, his wife, heirs at law of Meshack Browning, deceased, of the first part, and Sylvester Rinard, of the second part, Witnesses:

That for and in consideration of the sum of Two Thousand, Five Hundred and Eighty Dollars, in hand paid by the party of the second part unto the parties of the first part, the said parties of the first part do grant, bargain, and — unto the party of the second part, all that part of a tract of land called "Browning's Manor" and also part of a tract of land called "Border Life," of which the said Meshack Browning, deceased, died seized and possessed, lying and being in Garrett County, and State of Maryland, and contained within the following metes and bounds, and courses and distances, to wit:

Beginning for the same at a large stone pile at the end of thirty-eight and one-fourth perches on the fourth line of a tract of land called "Thomas and Ann" and on the line dividing the State of West Virginia from the State of Maryland, where it crosses the said

fourth line of said tract of land called "Thomas and Ann,"
 77 and running thence reversing it and part of the third line thereof, North eighty-two degrees East, thirty-eight and one-quarter perches; North twenty-eight degrees East, seventy perches to a planted stone marked "B" standing at the ends of the first line of Military Lot Number Twelve hundred and thirty-seven, and running thence with the second line thereof, and with the first line of each of Military Lots Numbers Twelve hundred and thirty-eight, Twelve hundred and thirty-nine, Twelve hundred and forty-one, Twelve hundred and forty-three, and Twelve hundred and forty-five, North five hundred and eighty-two perches to the beginning of a tract of land called "Decapolis, and reversing the last line thereof, North eight hundred and twenty-six perches, then still North four and one-half perches to the third line of Military Lot Number Twelve hundred and eighty-two, and reversing it and the second line thereof, and running with the second line and part of the third line of Military Lot Number Twelve hundred and eighty-four, West three perches; North one hundred and sixty perches; East sixty-eight perches to the tenth line of the whole tract called "Browning's Manor," and with it, North one hundred perches, then with the eleventh line thereof extended, West sixty perches; North eighty-one perches; West seventy-seven perches to a stake standing on the aforesaid line dividing the State of West Virginia from the State of Maryland, and with said line South — perches to the beginning, containing Eight Hundred and Sixty Acres.

Together with all the appurtenances thereunto belonging, in fee simple.

And the said parties of the first part, grantors herein, covenant that they will warrant generally the property hereby conveyed.

In witness whereof, we have hereunto set our hands and seals the day and date hereinbefore written.

Witness:	J. M. A. KELLEY.	[SEAL.]
R. T. BROWNING.	MARY DEWITT.	[SEAL.]
R. T. BROWNING.	A. C. DEWITT.	[SEAL.]
R. T. BROWNING.	WILLIAM BROWNING.	[SEAL.]
	MARY A. BROWNING.	[SEAL.]
R. T. BROWNING.	E. A. BROWNING.	[SEAL.]

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R. T. BROWNING.	NATHAN C. BROWNING.	[SEAL.]
R. T. BROWNING.	G. D. BROWNING.	[SEAL.]
R. T. BROWNING.	ANNA KITZMILLER.	[SEAL.]
R. T. BROWNING.	JOHN KITZMILLER.	[SEAL.]
R. T. BROWNING.	JAMES BROWNING.	[SEAL.]
R. T. BROWNING.	ISMENE BROWNING.	[SEAL.]
R. T. BROWNING.	NORMAND B. NETHKIN.	[SEAL.]
R. T. BROWNING.	HARRIET A. BRAY.	[SEAL.]
R. T. BROWNING.	WM. W. BRAY.	[SEAL.]
R. T. BROWNING.	JOHN L. BROWNING.	[SEAL.]
R. T. BROWNING.	MARY E. CHISHOLM.	[SEAL.]

R. T. BROWNING.	F. R. NETHKIN.	[SEAL.]
R. T. BROWNING	THOMAS BROWNING.	[SEAL.]
	SUSAN BROWNING.	[SEAL.]
R. T. BROWNING.	JOHN T. BROWNING.	[SEAL.]
R. T. BROWNING.	FLORENCE L. BROWNING.	[SEAL.]
R. T. BROWNING.	THOMAS A. NETHKIN.	[SEAL.]
R. T. BROWNING.	JERRY BROWNING.	[SEAL.]
	MARRY M. BROWNING.	[SEAL.]
R. T. BROWNING.	LOUISA C. FRANTZ.	[SEAL.]
R. T. BROWNING.	JOSEPH F. FRANTZ.	[SEAL.]

Witness as to signatures:

WM. B. CARLOCK. JOSEPH M. A. BROWNING. [SEAL.]

JAMES H. ARBUCKLE. HANNAH J. BROWNING. [SEAL.]

R. T. BROWNING. SARAH A. BROWNING.

R. T. BROWNING. Attorney for J. M. A. BROWNING. [SEAL.]

R. T. BROWNING. Attorney for R. M. BROWNING. [SEAL.]

R. T. BROWNING. [SEAL.]

Test as to Richard T. Browning:

GILMOR S. HAMIL.

Test: HATTIE C. BROWNING. [SEAL.]

JOSEPH DE WITT.

STATE OF MARYLAND.

Garrett County, To wit:

I hereby certify, that on this 24th day of May, A. D. 1882, before the subscriber, a Justice of the Peace of the State of Maryland, in and for **Garrett** County, personally appeared Joseph M. A. Kelley, Mary Dewitt and Archibald Dewitt, her husband, William Browning and Mary Browning, his wife, John T. Browning and Florence Browning, his wife, Louisa C. Frantz and Joseph F. Frantz, her husband, Edward A. Browning, Nathan C. Browning, George D. Browning, John L. Browning, Nancy Kitzmiller and John Kitzmiller, her husband, James Browning and Esmena Browning, his wife, Thomas Browning and Susan Browning, his wife, Jeremiah Browning and Mary Browning, his wife, Harriet Bray and William Bray, her husband, Mary Chisholm, Norman B. Nethkin, Francis Nethkin, Thomas A. Nethkin, and Sarah A. Browning, and acknowledged the foregoing deed to be their respective act. (The above erasures were made before the signing — of this acknowledgment.)

R. T. BROWNING, J. P.

Test:

R. T. BROWNING.

STATE OF MARYLAND,
Garrett County, To wit:

I hereby certify, that on this 21st day of April, A. D. 1882, before the subscriber, a Judge of the Orphans' Court for Garrett County, personally appeared Richard T. Browning, Attorney in fact for Reuben M. Browning, Joseph M. A. Browning and Hannah J. Browning Richard T. Browning and Hattie C. Browning, his wife, and acknowledged the foregoing deed to be their respective act.

JOSEPH DE WITT,

J. O. C.,

Judge of the Orphans' Court for Garrett Co.

STATE OF ILLINOIS,
McLean County, To wit:

I hereby certify, that on this 15th day of May, in the year 1882, before me, the subscriber, a Notary Public of the State aforesaid, in and for the County aforesaid, personally appeared Jos. M. A. Browning and Hannah J. Browning, his wife, and did each acknowledge the foregoing instrument in writing to be their act and deed.

In testimony whereof, I have hereunto signed my name and affixed my Notarial Seal the day and year in this certificate written.

[SEAL OF NOTARY.]

WILLIAM B. CARLOCK,

Notary Public.

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MOUNT STORM, WEST VIRGINIA. *May the 1st.*

R. T. Browning.

COUSIN DICK: If you will let me know when you can be at Uncle Jenies I will meet you there & sign that deed to "Browning's Manor," be there against noon when you come as it is impossible for me to leave over night, when ever I sign the deed I expect to receive the money for it, direct your letter to Fort Pendleton, care Louis Nydegger, then Louis will send it over to me, let me hear from you at once.

With regards for you & Hattie, I remain your cousin,

REBECCA CHISHOLM.

BLOOMINGTON, McLEAN COUNTY, ILLS.

I hereby authorise, R. T. Browning to transact all business, sign all papers and give receipts and releases for all claims that are due me from the estate of Meshack Browning, deceased, and such signatures signed in my name by said R. T. Browning shall be considered as valid as if done by me.

JOSEPH M. A. BROWNING.

May 15th, 1882.

DEAR NEPHEW: I rec'd your favor this morning and attended to it at once. I mail it back to you today. I am glad you are succeeding so well, you spoke of me being wronged with the matter,

I am only sorry I am so situated that I cannot take some of the burden off your shoulders, but I hope it will all soon be over, you may be assured that I will give you as little trouble as possible.

I think this power will be sufficient to show them that you are authorized to transact all business for me of all kinds.

Very respectfully,

J. M. A. BROWNING.

81 STATE OF MARYLAND.

Garrett County, To wit:

I, Edward Z. Tower, Clerk of the Circuit Court for Garrett County, in the State of Maryland, hereby certify that the above and foregoing is a true copy taken from Liber W. H. T., No. 6, folio 430, &c., one of the Land Records of Garrett County, Maryland.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Circuit Court, at Oakland, this 25th day of October, A. D. 1911.

[Seal Circuit Court, Garrett County.]

E. Z. TOWER, *Clerk.*

82 [Endorsed:] Md. Exhibit "D D." Certified copy of deed from Richard T. Browning, Att'y in fact to Sylvester Rinard.

83

VIII.

In connection with the matters aforesaid an older Maryland patent to Meshack Browning, to-wit, the patent of a tract of land called "Home" containing 190 acres, issued on the 23d day of February, 1857, and following the special warrant of survey granted out of the Land Office of Maryland the 6th day of February, 1840, and returned into the said Land Office the 5th day of August, 1840, covered and embraced the lands above described as "Browning Manor," said patent being filed herewith, marked "Maryland Exhibit E."

84 Meshack Browning, His Patent, "Home," 190 Acres.

The State of Maryland to all persons to whom these presents shall come, Greeting:

Know Ye That whereas Meshack Browning of Allegany County had surveyed and laid out for him a tract or parcel of land called "Home" lying in the county aforesaid and containing One hundred and ninety acres of land by virtue of a Special Warrant for one hundred acres granted out of the Land Office of Maryland to the said Meshack Browning the sixth day of February Eighteen hundred and forty as appears &c., and he having fully compounded for the same according to law.

The State of Maryland doth therefore hereby Grant unto him the said Meshack Browning the said tract or parcel of land called "Home" lying in Allegany County aforesaid

Beginning at a stone heap supposed to stand on the line dividing the State of Virginia from the State of Maryland and standing West one hundred and seventy perches from the end of the third line of Lot No. 1288 and running thence (1) North one hundred and twenty perches to the centre between two Hemlock Saplings marked with three notches each, then (2) East one hundred and twenty perches, (3) South one hundred and seventy-three and one half perches, (4) South thirteen and one half degrees West eighty-one perches, (5) West one hundred perches, (6) then by a straight line to the beginning.

Containing One hundred and ninety acres, according to the Certificate of Survey thereof taken and returned into the Land Office bearing date the fifth day of August, Eighteen hundred and forty and there remaining together with all rights, profits, benefits and privileges thereunto belonging. To Have and To Hold the same unto him the said Meshack Browning his heirs and assigns forever.

Given under the Great Seal of the State of Maryland, this 85 twenty-third day of February, Eighteen hundred and fifty-seven.

T. W. LIGON. [THE GREAT SEAL.]

LAND OFFICE OF MARYLAND:

I certify that the foregoing Patent is proper to be issued. In testimony whereof I hereto set my hand and affix the Seal of the Land Office of Maryland this twenty-third day of February, Eighteen hundred and fifty-seven.

[Land Office of Maryland.]

JAMES MURRAY,
Commissioner of the Land Office.

LAND OFFICE OF MARYLAND, set:

I hereby certify that the foregoing is a true Copy of the Patent of "Home" 190 acres, patented to Meshack Browning 23rd February, 1857, as recorded in Liber G. G. B. No. 8 folio 511 &c., one of the Record Books on file in this office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Land Office of Maryland, this fifteenth day of July, Nineteen hundred and ten.

[Seal of the Land Office of Maryland.]

THOS. G. SMITH,
Commissioner of the Land Office.

86 [Endorsed:] Md. Exhibit E. Copy. Meshack Browning,
his Patent "Home" 190 acres.

87 And further in connection therewith the following protest
was filed:

"In Camp.

NOVEMBER 19TH, 1910.

Maryland-West Virginia Boundary Commission,
Julius K. Monroe, Esq., Sect'y.

DEAR SIR: I wish to record my exceptions and protests to the running, and location, and marking of our line of 1910, in its relation to the Maryland grant called 'Home' which was surveyed for Meshack Browning under a Special Warrant, February 6th 1840, and which has been in possession under that title ever since, and those residing upon it have heretofore given allegiance to the former State. This tract calls to begin 'On the line dividing the State of Virginia from the State of Maryland,' and runs North with that Line. Our line as located, I believe to be entirely east of 'Home.'

Yours truly,

W. McCULLOH BROWN,
Commissioner."

IX.

And furthermore in connection with the matters and proceedings last above referred to, the patent to Meshack Browning from the State of Maryland of a tract called "Scales" being 405½ acres following a Special warrant of Eschete to resurvey and affects certain lots dated July 4th 1828, returned into the Land Office of the State of Maryland June 9th 1829, said patent dated February 1, 1830, and said patent was offered to said Commissioner Julius K. Monroe and Samuel S. Gannett to show that there was a State Line recognized west of the Military Lot, in or about the year 1828, and is filed herewith as part hereof marked "Maryland Exhibit F."

88 Mr. Meshack Browning, His Patent, "Scales," 405½ Acres.

THE STATE OF MARYLAND, &c.:

Know Ye that whereas Meshack Browning of Allegany County, on the fourth day of July, Eighteen hundred and twenty-eight, obtained out of the Western Shore Land Office a Special Warrant of Escheat, to resurvey and affect the following Lots, lying in the County aforesaid, and contiguous to each other viz: Nos. 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1400, 1401, 1402, 1403, 1420, 1421, 1418, 1416, 1414, 1412, 1410, 1408, 1406, 1404, 1419, 1417, 1415, 1413, 1411, 1409, 1407, 1405, 1422, 1424, 1426, 1428, 1430, 1431, 1432, 1445, 1446, 1447, 1448, 1450, 1451, 1463, 1449, 1453, 1455, 1457, 1452, 1433, 1434, 1444, 1435, 1436, 1443, 1437, 1438, 1442, 1439, 1440, 1441, 1490 and 1492, with liberty of correcting errors, adding any contiguous vacancy, and of reducing the whole into one entire tract. In virtue whereof it is certified into the Land Office, that a resurvey was only made of the following Lots Nos. 1288, 1290, 1296, 1297, 1298 and 1299, and a Certificate thereof returned when the same were found to contain, with one hundred and five and a half acres of vacant land added the quantity of four hundred and

five and a half acres, and called. "Scales," and he having fully compounded for said land according to law.

The State of Maryland doth therefore hereby Grant unto him the said Meshack Browning the said tract or parcel of land called "Scales," lying in Allegany County aforesaid.

Beginning for the outlines of the whole at the original beginning of Lot Number one thousand two hundred and ninety and running thence with the first line of said Lot, and reversing the first line of Lot Number one thousand two hundred and eighty-eight, and running with the first line of Lot Number one thousand two hundred and eighty-six, (1) South two hundred and thirteen and one half perches, then (2) West one hundred and fifty perches, (3) North two hundred and thirteen and one half perches, (4) East forty-five perches, (5) North one hundred and seventy perches, (6) East five perches, to the third line of Lot Number one thousand two hundred and ninety-six, and reversing said line, and running with the third line of Lot Number one thousand two hundred and ninety-eight, (7) North one hundred and fifty perches, then running with the given line of the last mentioned Lot, and reversing the given line of Lot Number one thousand two hundred and ninety-nine, (8) East two hundred perches, then reversing the third line of the last mentioned Lot and running with the third line of Lot Number one thousand two hundred and ninety-seven, (9) South one hundred and sixty perches, then with the given line of the last mentioned Lot, and reversing the given line of Lot Number one thousand two hundred and ninety-six, (10) West two hundred perches, then (11) South one hundred and sixty perches to the end of the third line of Lot Number one thousand two hundred and ninety, then by a straight line to the beginning.

Containing Four hundred and five and one half acres, according to the Certificate of Resurvey thereof, taken and returned into the Western Shore Land Office bearing date the ninth day of June, Eighteen hundred and twenty-nine, and there remaining together with all rights, profits, benefits and privileges thereunto belonging. To Have and To Hold the same unto him the said Meshach Browning his heirs and assigns forever.

Given under the Great Seal of the State of Maryland this first day of February, Eighteen hundred and thirty.

Witness the Honorable Theodorick Bland, Esquire, Chancellor.

[THE GREAT SEAL.]

THEODORICK BLAND, *Char.*
THOS. K. CARROLL.

90 LAND OFFICE OF MARYLAND, *set:*

I hereby certify that the foregoing is a true Copy of the Patent of "Scales" 405½ acres, patented to Meshach Browning, 1st Feb. 1830, as recorded in Liber G. G. B. No. 1 folio 131 &c., one of the Record Books on file in this office.

In testimony whereof, I have hereunto set my hand and affixed

the Seal of the Land Office of Maryland, this twenty-fifth day of July, Nineteen hundred and ten.

[Seal of the Land Office of Maryland.]

THOS. G. SMITH,

Commissioner of the Land Office.

91 [Endorsed:] Md. Exhibit F. Copy. Meshach Browning,
his Patent, "Scales." 405½ acres.

92 X.

When the Commissioners in the course of the survey which was begun at Fairfax Stone arrived at the tract of land called "Agathos," about twenty-three miles north of the Fairfax Stone and a short distance west of Lot 1292 and near Monument No. 19, Commissioner Brown offered to the Commissioners to prove that the tract of "Agathos," upon a special warrant of survey issued from the Land Office of Maryland, February 27th, 1852, and returned to said Land Office September 1st, 1852, was patented June 22nd, 1853 to one Hiram B. Wolfe, of Allegany County in the State of Maryland. Said tract "Agathos" contained some 330 acres.

Commissioner Brown further offered title papers, and to prove that said tract had been in possession of Maryland owners and tenants under the Maryland title above mentioned from said year 1852, to the present day, as follows, to wit:

"Agathos," Greater Part Owned by Hiram W. Ringer.

- | | |
|--|--|
| 1. Patent "Agathos" | Special Warrant February 27th,
1852, Certificate of Survey
September 1st, 1852; Patented
June 22, 1853, to Hiram B.
Wolfe. |
| 2. State of Maryland use of
vs.
Hiram B. Wolfe, et al. | Circuit Court
July 7, 1885
Executions issued. |
| 3. Perry Shultz, Shff.
to
Daniel Wineow | Deed
Dec. 8, 1859
"Agathos" |
| 4. Daniel Wineow
vs.
His Creditors | No. 100 Insolvencies
W. E. Walsh, Tste. |
| 5. W. E. Walsh, Tste.,
to
Ellen Wineow | Deed
July 14, 1863
"Agathos" |

- | | |
|--|---|
| 6. Ellen Wineow and husband
to
S. W. Wardwell | Deed, Feb. 9, 1867
"Agathos" |
| 93 | |
| 7. S. W. Wardwell
to
Ellen Wineow | Mortgage
Feb. 9th, 1867
"Agathos" |
| 8. Ellen Wineow
vs.
S. W. Wardwell | No. 1693 Equity
W. M. Price, Trst. |
| 9. W. M. Price, Trst.,
to
Jacob Fichtner | Deed
May 13, 1869
"Agathos" |
| 10. Catharine Wolfe,
to
Jacob Fichtner | Deed
May 13, 1875
"Agathos" |
| 11. Jacob Fichtner and wife
to
Potomac Paper Co., Alle-
gany Co., Md. | Deed
May 5, 1890
"Agathos" |
| 12. Lloyd Lowndes and wife, Re-
ceiver,
to
The Cumberland Paper Co. | Deed
Jan. 25, 1893
"Agathos" and other lands. |

NOTE.—No. 13 is Confirmatory Deed, the original having been destroyed in burning of the Allegany Court House.

- | | |
|---|-------------------------------------|
| 14. Cumberland Paper Co.
to
Hiram W. Ringer | Deed
Jan. 31, 1905.
"Agathos" |
|---|-------------------------------------|

The Potomac Company merged into the Cumberland Paper Co.

A certified copy of said patent to said Wolfe is filed herewith as part hereof marked "Maryland Exhibit G" the same having been offered to the Commission as evidence during the survey.

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MD. EXHIBIT G.

Hiram B. Wolfe, His Patent, "Agathos," 330 Acres.

THE STATE OF MARYLAND:

To all persons to whom these presents shall come, Greeting:

Know Ye that whereas Hiram B. Wolfe of Alleghany County had surveyed and laid out for him a tract or parcel of land called "Agathos" lying in the County aforesaid and containing three hundred and thirty acres by virtue of a Special Warrant for ninety acres obtained by him the twenty-seventh day of February, Eighteen hundred and fifty-two as appears &c., and he having fully compounded for said land according to law.

The State of Maryland doth therefore hereby Grant unto him the said Hiram B. Wolfe the said tract or parcel of land called "Agathos" lying in Allegany County aforesaid.

Beginning for the same at a stake standing at the end of the third line of Lot No. 1292 Westward of Fort Cumberland and running thence reversing a part of the given and the fourth lines of a tract of land called "Scales" resurveyed for Meshac Browning the ninth day of June, Eighteen hundred and twenty-nine West forty-eight perches to the end of the second line of a tract of land called "Home" surveyed for Meshac Browning the fifth day of August, Eighteen hundred and forty and reversing this line still West one hundred and twenty perches to the line dividing the State of Maryland from the State of Virginia and with this line North three hundred and twenty perches, then East one hundred and sixty-five perches to the end of the third line of Lot No. 1298, and with the Westward Range of Lots Nos. 1298, 1296, 1294 and 1292 South three hundred and twenty perches to the beginning.

Containing Three hundred and thirty acres, according to the Certificate of Survey thereof, taken and returned into the Land Office bearing date the first day of September, Eighteen hundred and fifty-two and there remaining: Together with all rights,
 95 profits, benefits and privileges thereto belonging. To Have
 and To Hold the same unto him the said Hiram B. Wolfe
 his heirs and assigns forever.

Given under the Great Seal of the State of Maryland this twenty-second day of June, Eighteen hundred and fifty-three.

[THE GREAT SEAL.]

E. LEWIS LOWE.

LAND OFFICE OF MARYLAND:

I certify that the within Patent is proper to be issued. Witness my hand and the Seal of the Land Office of Maryland this twenty-second day of June, eighteen hundred and fifty-three.

[Land Office of Maryland.]

JAMES MURRAY,
Com'r of the Land Office.

LAND OFFICE OF MARYLAND, *set:*

I hereby certify that the foregoing is a true Copy of the Patent of "Agathos" 330 acres, patented to Hiram B. Wolfe 22nd June, 1853, as recorded in Liber G. G. B. No. 8 folio 222 &c., one of the Record Books on file in this office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Land Office of Maryland, this eighteenth day of October, Nineteen hundred and ten.

[Seal of the Land Office of Maryland.]

THOS. G. SMITH,

Commissioner of the Land Office.

96 [Endorsed:] Md. Exhibit G. Copy. Hiram B. Wolfe, his Patent of "Agathos," 330 acres.

That the majority of the Commissioners refused to receive or consider any of said testimony, and ignored and disregarded the application and request of said Commissioner Brown that such testimony be taken and considered.

97 That thereupon the said Commissioner Brown excepted to and protested against the action of said Commission as follows, to wit:

"In Camp.

NOVEMBER 19, 1910.

Maryland-West Virginia Boundary Commission,

Julius K. Monroe, Esq., Sec'y.

DEAR SIR: I take exception to the offset made by the majority of the Commissioners, from Station 352, (Monument No. 19) eastward to the range of Military Lots, Numbers 1292, etc., and to the reason given that it was made to conform with the southern line of a grant of land by Virginia to John Crane. No evidence being taken during the survey to warrant this change, neither do I find anything in the Record. The lands in Maryland affected by the above change, have been held in uninterrupted use and possession under title for more than fifty years.

Yours truly,

W. McCULLOH BROWN,

Commissioner."

The offset above referred to is from Monument No. 19 eastward to Monument No. 20 on Map filed in this case.

Commissioner Brown made this offer, to wit:

"In Camp.

NOVEMBER 19, 1910.

Maryland-West Virginia Boundary Commission,

Julius K. Monroe, Esq., Sec'y.

DEAR SIR: I would request that testimony be taken by the Com-

98 missioners in relation to the present ownership, possession and title of a tract of land covered by a Maryland survey called "Agathos," surveyed for Hiram B. Wolfe, February 27th, 1852, which tract calls for the line dividing the State of Maryland from the State of West Virginia upon its western border; and that the tract be located upon the ground in relation to our present line, with the view of ascertaining whether our line should not pass west of this survey.

W. McCULLOH BROWN,
Commissioner."

In spite of the offer and protests of said Commissioner Brown, as aforesaid, the majority of the Commissioners, Mess. Monroe and Gannett, when they had reached the southern line of the John Crane survey of 776 acres, discontinued the northerly course of the line being run as the proposed boundary, and made an offset at right angles toward the east until they intersected the third line of Military Lot No. 1292, and then again turned northward, following the western lines of the range of lots, 1292-1294-1296-1298, thus throwing and including in the State of West Virginia all but about 20 acres of the tract called "Agathos" and depriving the State of Maryland of all of said territory aforesaid, of said tract called "Agathos," to which it is entitled, as is respectfully submitted, under the Decree of the Court; in the running and the marking of said line, although as above stated, Commissioner Brown had offered to prove the facts that the said territory has been held in possession and is now held in possession by one Hiram Ringer as a part of the territory of Maryland under the Maryland title, he paying taxes thereon to the State of Maryland and acknowledging its Sovereignty over said land (as shown by the certificate of the Tax Collector of Garrett County, Maryland,) the majority of the Commissioners, Mess. Monroe and Gannett, declined to take testimony or to receive evidence to prove the facts aforesaid, which facts said Mess. Monroe and Gannett entirely disregarded and so ran and established the proposed boundary line in said vicinity as to deprive Maryland of territory justly hers and make said territory part of West Virginia in defiance of the letter and spirit of the Decree of this Honorable Court herein.

99 Mr. Brown, Commissioner, repeatedly asked that testimony be taken regarding all the above matters, which testimony be offered as aforesaid, but the majority of the Commissioners Messrs. Monroe and Gannett, declined and refused to take or receive such testimony or any of the same, and ignored and disregarded entirely the applications, offers and demands of Commissioner Brown, as aforesaid, and in spite of said applications, offers and demands, and in spite of said patent and titles under Maryland grants, and in spite of the fact that all of said land, aforesaid has been held in actual use and possession under said Maryland grants and titles for more than twenty years prior to April, 1890, when the Statute of Maryland authorizing this suit was passed, the majority of the Commissioners, Messrs. Monroe and Gannett, have so run and prolonged the proposed boundary line directed to be run and located by the

Decree of the Supreme Court, so as wrongfully and unjustly to throw and include said lands in the State of Virginia and take them away from the State of Maryland and wrongfully and unjustly to deprive the State of Maryland of the same, all in disregard of the Decree of the Supreme Court in this cause which specially provides that "the said line shall be run and located as far as practicable; it has been generally regarded and adopted by the people residing about or near the same as the boundary line between the two States," etc.

To all of which action and actions upon the part of the majority of the Commissioners, Messrs. Monroe and Gannett, Commissioner Brown repeatedly and constantly protested against and excepted to the same.

100

XI.

Mr. Brown also repeated and filed with the Commission a request for stated meetings, etc., etc., as follows:

"In Camp.

CRANESVILLE, W. VA., *July 13, 1911.*

Maryland-West Virginia Boundary Commission,
Julius K. Monroe, Esq., Sect'y.

DEAR SIR: I desire to repeat now, before the work of the survey and marking of the proposed boundary line, (which the Commissioners are required to run and establish under the Decree of the Supreme Court), is resumed, the request and demand that the Commissioners, as a body, held regular stated meetings for the discussion of the proceedings, method and manner, and all material details and circumstances of, and connected with the running and location and marking of the proposed boundary line, and that records or minutes be kept of said meetings; and that any demand made by any of the Commissioners be reported and heard; that any objection to any decision of the majority of the Commissioners be reported and heard; and further, that the Commission acting as an organized body, proceed as such and both decide upon and execute its decisions with respect to the running of said line, as such, or in accordance with the decision of said Commission as an organized body and acting as such.

In the absence of such meetings and such proceedings, which you are aware have not been held, or pursued heretofore, I fully reserve the right at any time to file demands with respect to what I deem the proper course to be pursued under and in accordance with
101 the Decree of the Supreme Court under which we are acting, and to protect against and except to, at any time, the action or actions of the Commission with respect to any feature or proceeding concerning said proposed boundary line.

I also respectfully request and demand that, upon the application of any one of the Commissioners, testimony be taken or evidence adduced or examined which such Commissioner may consider pertinent to the survey and location of said boundary line. That such

request be granted and such testimony be taken under oath, and that all witnesses called be put under oath and their testimony recorded with the right to any Commissioner or Counsel for either the State of West Virginia or the State of Maryland to examine or cross-examine such witnesses.

I also ask again that wherever or whenever a change is made in the course or direction of the boundary line or the location of the part thereof, that testimony and proof be obtained before the full Commission, upon the demand of any one Commissioner therefor, to show the reason for such change, and that all changes as well as all other proceedings of the Commission be in conformity with the Decree of the Supreme Court.

Yours truly,

W. McCULLOH BROWN,
Commissioner."

The above requests and demands of Commissioner Brown were completely ignored and disregarded and not followed in any respect, and no record or journal of the Commission was kept at any time during the course of the work of this Commission either in the years 1910 or in 1911. The only notes kept being the field notes giving
102 courses and distances run by the Surveyor in charge of the party and references to roads, streams, mountains and property lines when known, as they were crossed during the progress of the survey.

XII.

Commissioner Brown then made the following protest and exception, viz:—

"In Camp

CRANESVILLE, W. VA., *July 13, 1911.*

Maryland-West Virginia Boundary Commission.

Julius K. Monroe, Esq., Sec't'y.

DEAR SIR: I wish to record my exception and protest to the present location of our proposed boundary line in relation to the Maryland land grants, known as "Ligonia" and "Pine Swamp" which by our survey are practically transferred to the State of West Virginia.

Yours truly,

W. McCULLOH BROWN,
Commissioner."

In connection with the above, the following patent was offered to the Commisison for its consideration.

MD. EXHIBIT H.

The said majority of the Commissioners, however, paid no attention whatever to said protest or exception or to the offer of said patent, but totally disregarded all the same, to the injury of the rights of Maryland in the premises and in derogation of said decree herein.

103 William Browning, His Patent, "Ligonia," 149 $\frac{3}{8}$ Acres.

The State of Maryland to all persons to whom these presents shall come, Greeting:

Know Ye that whereas William Browning of Allegany County had surveyed and laid out for him a tract or parcel of land called "Ligonia" lying in the County aforesaid and containing one hundred and forty-nine acres and three-eighths of an acre by virtue of a Special Warrant for ninety acres granted unto the said William Browning bearing date the eleventh day of April, Eighteen hundred and fifty-four, out of the Land Office of Maryland as appears &c., and he having fully compounded for the same according to law.

The State of Maryland, doth therefore hereby Grant unto him the said William Browning the said tract or parcel of land called "Ligonia" lying in the County aforesaid.

Beginning for the same at a stake standing at the North West corner of Lot No. 1298, which is also at the end of the fourth line of a tract of land called "Agathos" surveyed for Hiram B. Wolfe the first say of September, 1852, and running thence reversing part of the said fourth line West one hundred perches to the line which divides the State of Maryland from the State of Virginia and with this line North two hundred and twenty-five perches to the given line of a tract of land called "Diadem" or "The Diadem" surveyed in the year 1774 and with this given line East sixty perches to the beginning place of the said tract called "Diadem" then with part of the first line thereof North sixty degrees East fifty-four perches to the eleventh line of a tract of land called "Recourse" patented to Samuel Selby 3rd and James and Thomas Cook May the 12th, 1796, and with the remainder of this line and the twelfth line thereof South sixty-one perches, South thirty-seven degrees East forty perches to the end of the said twelfth line and also to the end of seventy perches on 104 the second line of Lot No. 1402, and with the remainder of this line and also with the third line of this Lot, and also with the third line of Lot No. 1400, West thirty perches South one hundred and sixty perches to the beginning.

Containing One hundred and forty-nine and three-eighths acres, according to the Certificate of Survey thereof taken and returned into the Land Office bearing date the *entventh* day of January, Eighteen hundred and fifty-five and there remaining; together with all rights, profits, benefits and privileges. To Have and To Hold the same to him the said William Browning his heirs and assigns for ever.

Given under the Great Seal of the State of Maryland this twenty-fourth day of February, Eighteen hundred and fifty-seven.

T. W. LIGON. [THE GREAT SEAL.]

[Seal of the Land Office of Maryland.]

LAND OFFICE OF MARYLAND:

I certify that the foregoing Patent is proper to be issued. In testimony whereof I hereto set my hand and affix the Seal of the

Land Office of Maryland this twenty-fourth day of February, Eighteen hundred and fifty-seven.

[Land Office of Maryland.]

J. MURRAY,
Comm'r of the L'd Office.

105 LAND OFFICE OF MARYLAND, *set*:

I hereby certify that the foregoing is a true Copy of the Patent of "Ligonia" 149 $\frac{3}{8}$ acres, patented to William Browning 24th February, 1857, as recorded in Liber G. G. B. No. 8 folio 513 &c., one of the Record Books on file in this office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Land Office of Maryland, this eighteenth day of October, Nineteen hundred and ten.

[Seal of the Land Office of Maryland.]

THOS. G. SMITH,
Commissioner of the Land Office.

106 [Endorsed:] Md. Exhibit H. Copy. William Browning, his Patent of "Ligonia" 149 $\frac{3}{8}$ acres.

107 XIII.

Mr. Brown made the following request that testimony be taken:

"In Camp.

CRANESVILLE, W. VA., *July* 13, 1911.

Maryland-West Virginia Boundary Commission,

Julius K. Monroe, Esq., Sec'y.

DEAR SIR: I would request that testimony be taken in relation to the possession and ownership of the land covered by the Maryland tract of land called "Tudor" which was patented by the State of Maryland to John Crane, and by him deeded to Israel Frankhouser, and is still in possession of the latter's heirs, who pay taxes upon the same in Maryland. By our present running a portion of this tract is placed upon the West Virginia side of the line. I am ready to exhibit Maryland patent and deeds for the above land.

Yours truly,

W. McCULLOH BROWN,
Commissioner."

In connection with the above, the following patent was offered to the Commission for its consideration.

MD. EXHIBIT K.

108 John Crane, His Patent, "Tudor," 131 $\frac{1}{4}$ Acres.

THE STATE OF MARYLAND, &C.:

Know ye that whereas Joab Browning, of Allegany County, on the eighteenth day of February, eighteen hundred and thirty-five, obtained out of the Western Shore Land Office a Special Warrant of Escheat, to resurvey and affect the following Lots, lying in the County aforesaid, and contiguous to each other, viz: No. 1282, 1283, 1284, 1285, 1286, 1287, 1289, 1291, 1292, 1293, 1294, 1295, 1400, 1401, 1402, 1403, 1420, 1421, 1418, 1416, 1414, 1412, 1410, 1408, 1406, 1404, 1419, 1417, 1415, 1413, 1411, 1409, 1407, 1405, 1422, 1424, 1426, 1428, 1430, 1431, 1432, 1445, 1446, 1447, 1448, 1450, 1451, 1463, 1449, 1453, 1455, 1457, 1452, 1433, 1434, 1444, 1435, 1436, 1443, 1437, 1438, 1442, 1439, 1440 and 1441, with liberty of correcting errors, adding any contiguous vacancy, and of reducing the whole into one entire tract. In pursuance whereof, a resurvey was made on only the following Lots, viz: 1401 and 1402, and a certificate thereof returned, when the same were found to contain with thirty-one acres and one-fourth of an acre of Vacant Land added, the quantity of one hundred and thirty-one acres and one-fourth of an acre, and called "Tudor." And he having fully compounded for said land according to law; and since by his assignment bearing date the twenty-first day of January, eighteen hundred and forty, assigned, transferred and made over the same unto John Crane.

The State of Maryland doth therefore hereby grant unto him the said John Crane, the said Lots resurveyed as aforesaid, with the vacancy added, reduced into one entire tract, and called "Tudor," lying in Allegany County aforesaid.

Beginning for the outlines of the whole at a bounded cherry tree, it being the beginning tree of Lot No. 1401, and running thence with part of the first line of Lot No. 1401, North sixty perches; then

North forty-five degrees West twenty-eight perches to the
109 given line of Lot No. 1402; and reversing said line extended.

West one hundred and twenty perches; then North eighty perches; East one hundred and forty perches to the end of the first line of Lot No. 1402; and reversing said line, South eighty perches to the beginning of said Lot; then with the second line extended of Lot No. 1401, East one hundred and twenty perches; then South eighty perches; then by a straight line to the beginning.

Containing one hundred and thirty-one acres and one-fourth of an acre, according to the certificate of resurvey thereof, taken and returned into the Western Shore Land Office bearing date the twelfth day of February, eighteen hundred and thirty-six, and there remaining; together with all rights, profits, benefits and privileges thereunto belonging. To Have and To Hold the same unto him the said John Crane, his heirs and assigns forever.

Given under the great Seal of the State of Maryland this fourth day of February, eighteen hundred and forty.

Witness the honorable Theodorick Bland, Esquire, Chancellor.

[THE GREAT SEAL.]

WM. GRASON.

THEODORICK BLAND, *Ch'r.*

LAND OFFICE OF MARYLAND, *set:*

I hereby certify, that the foregoing is a true copy of the patent of "Tudor," containing 131¼ acres, patented to John Crane 4th February, 1840, as recorded in Liber G. G. B. No. 3, folio 494 etc., one of the record books on file in this office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Land Office of Maryland, this sixth day of December, one thousand nine hundred and ten.

[Seal of the Land Office of Maryland.]

THOS. G. SMITH.

Commissioner Land Office.

110 [Endorsed:] Md. Exhibit K. Copy. John Crane, his patent, "Tudor," 131¼ acres.

111 Mr. Brown then protested against and excepted to the action of said majority of the Commission in disregarding and ignoring said request and offer:—

"In Camp.

CRANESVILLE, W. VA., *July 15, 1911.*

Maryland-West Virginia Boundary Commission.

Julius K. Monroe, Sec'y.

DEAR SIR: I wish to record my exception and protest to the permanent running and marking of the boundary line in such a manner as will throw a portion of the Maryland grant called "Tudor" containing 31¼ acres of land to the State of West Virginia. Thus depriving the State of Maryland of that much territory upon which she and her citizens have exercised possession. "Tudor" was patented to John Crane by the State of Maryland under warrant of resurvey dated the 18th day of February, 1835, and from him was passed in uninterrupted possession to M. H. Frankhouser of Maryland.

Yours truly,

W. McCULLOH BROWN,

Commissioner."

112

XIV.

Mr. Brown made the following request and offer of testimony, viz:

"In Camp.

CRANESVILLE, W. VA., *July 13, 1911.*

Maryland-West Virginia Boundary Commission,

Julius K. Monroe, Esq., Sect'y.

DEAR SIR: I request that you examine the patent of the Diadem and all papers relating to the subdivisions, as portions are now owned by citizens of the State of Maryland, and upon which taxes are paid into the Treasury of Garrett County, with the view of ascertaining whether our boundary line as now located, does not cut from the State of Maryland territory which is rightfully hers. I also request that you take testimony of Clyde Falkenstein, Chas. Falkenstein and Samuel Strawser as to which State they have given allegiance to, up to the present time, and which State has called upon them for jury duty. I would also ask that you take the same sworn testimony from Messrs. Wm. H. Lewis, F. Orval Friend and Eugene Teets.

Yours truly,

W. McCULLOH BROWN,

Commissioner."

XV.

The copy of the Diadem will be found upon page 704 of the printed Record of this case, to which reference is hereby made.

The said majority of the Commissioners ignored and disregarded said request and offer of testimony, paid no heed whatever to the same and ran the proposed boundary in disregard thereof and
113 to the injury of Maryland and against the said Decree herein.
Mr. Brown protested and excepted as follows:

"In Camp.

CRANESVILLE, W. VA., *July 15, 1911.*

Maryland-West Virginia Boundary Commission,

Julius K. Monroe, Esq., Sect'y.

DEAR SIR: I wish to record my exception and protest to the permanent location and marking of the State Boundary line in a manner which may be considered far east of that to which the citizens of Maryland have had possession and to which they are now paying taxes into the treasury of the State of Maryland.

The tract called "The Diadem" is one of the oldest surveys made by, or in behalf of the State of Maryland, April 11, 1774, and out dates any grant made here by the State of Virginia. Taxes were paid on the tract to Maryland until its transfer to John Crane by the heirs of Abraham Van Bibber, in or about the year 1860. (See Record Page 704.)

By this running Maryland is deprived of many acres of valuable land, and some of her citizens are placed in the State of West Virginia.

Yours truly,

W. McCULLOH BROWN,

Commissioner."

114

XVI.

Mr. Brown made the following request and offer of testimony:

"In Camp.

CRANESVILLE, W. VA., *July 15, 1911.*

Maryland-West Virginia Boundary Commission,

Julius K. Monroe, Esq., Sec'y.

DEAR SIR: I request that you examine the title, papers of the Maryland tract of land called "Conrobert" and take such testimony or run such lines as will show whether or not the marked line which we have found near the summit of Fike's Hill is approximately upon the original location of the westernmost line of that tract, or whether a portion of the original survey lay to the west of our present running.

Yours truly,

W. McCULLOH BROWN,

Commissioner."

The said majority of the Commissioners paid no heed or attention to said request and offer but totally disregarded the same and ran into proposed boundary line in said vicinity in disregard thereof and against the said Decree herein.

115

XVII.

Mr. Brown made the following request and offer:

"In Camp.

ELDER SPRING, *July 27, 1911.*

Maryland-West Virginia Boundary Commission,

Julius K. Monroe, Esq., Sec'y.

DEAR SIR: I request that before the permanent location and marking of the Boundary line which we are running is made, you take the testimony of Jefferson Birch, Sherman Friend, Samuel Falkner, Fred Falkner, Martin Falkner and Melville Friend, as to which State they have given allegiance to, and have been called upon for jury duty, and to which State they pay their taxes.

Yours truly,

W. McCULLOH BROWN,

Commissioner."

Which request was wholly disregarded by said majority of the Commissioners who proceeded with said proposed line without any such testimony to the injury of said citizens of Maryland and of the rights of Maryland in the premises and derogatory to the said decree herein.

116

XVIII.

Mr. Brown made the following request in order that the line to be run as the proposed boundary should conform as far as might be

possible with that part of the said Decree herein which requires "the said line to be run and located as far as practicable as it has been generally recognized and adopted by the people residing about or near the same as the boundary line between the said States."

"In Camp.

SELBYSFORD, *July 13, 1911.*

Maryland-West Virginia Boundary Commission,
Julius K. Monroe, Esq., Secty.

DEAR SIR: When running our line of boundary north from the locality of Sherman Friend, I request that when selecting the several points which will be used as the basis of the course, and through which our Boundary line will pass, that you endeavor to ascertain whether these points, and this line are common in the present holdings and possessions of the citizens of the two States, along and bordering on said line; and whether the line as we will run it has been practically acknowledged as the boundary when taxes were paid. I would like witnesses examined under oath.

Yours truly,

W. McCULLOH BROWN,
Commissioner."

This application was absolutely ignored by the said majority of the Commissioners who proceeded in disregard thereof.

117

XIX.

The title papers of "Re-survey on All the Chances" "Border Life" "Browning's Manor," "Home," "Agathos," "Ligonia" and "Tudor," were offered the Commissioners, not only to show the possession right of certain persons; but these, and the following patents of "Canrobert," "Evans Land," "Arabia" and "Hammond's Corner" were offered to show that through all these papers there ran the call for a dividing line between the States of Maryland and Virginia (which had been acknowledged some years prior to the running of any line by Lieutenant Michler in 1859) to the westward of the Maryland Military Lots, yet not so far west as the Meridian.

In connection with the foregoing, the several patents for

"Agathos" near Monuments Nos. 19-20

"Ligonia" near Monuments Nos. 20-21

"Tudor" near Monument No. 21

"Diadem" near Monument No. 23 and northward

"Canrobert" near Monuments Nos. 24-25 (Md. Exhibit L)

"Evans Land" near Monuments Nos. 26-27 (" " M)

"Arabia" near Monuments Nos. 29-30 (" " N)

"Hammond's Corner" near Monuments Nos. 33-34.

(See Record page 1833.)

"Border Life" near Monuments Nos. 15 and 16

"Browning's Manor" between Monuments Nos. 16 and 18

"Home" near Monument No. 18.

were submitted to the Commission.

The Commissioners, Messrs. Julius K. Monroe and Samuel S. Gannett, made no attempt to ascertain the location of such a line, though frequently requested to do so by Commissioner Brown.

118 Elijah Friend and George Percy, Their Patent, "Canrobert,"
368 15/16 Acres.

The State of Maryland to all persons to whom these presents shall come, Greeting:

Know Ye that Whereas Elijah Friend of Allegany County on the twenty seventh day of February eighteen hundred and fifty four obtained out of the Land Office of Maryland a Special Warrant of Escheat to Resurvey Lots Nos. 1448, 1449, 1450, 1451, 1452, 1453, 1462, 1461, 1460, 1459, and 1458, which had Escheated to the State for want of the Heirs of ——— who died seized thereof intestate and without heirs, with liberty of correcting errors, adding any contiguous vacancy and of reducing the whole into one entire tract.

In pursuance whereof it is certified that a resurvey was made of Lot No. 1461, to which was added three hundred and twenty acres of vacant Land and a certificate thereof returned when the same was found to contain the quantity of three hundred and sixty eight and fifteen sixteenths acres, and the whole called "Canrobert," for which he Compounded according to law—and the said Elijah Friend before obtaining Patent for the same on the third day of January eighteen hundred and fifty five assigned one undivided half part thereof to George Percy of Allegany County of said land.

The State of Maryland doth therefore hereby Grant unto them the said Elijah Friend and George Percy, the said tract of
119 land called "Canrobert."

Beginning for the outlines of the whole at a stake standing at the beginning place of said original Lot number one thousand four hundred and sixty one, and running thence with the first and second lines thereof, South, one hundred and seventy four perches; West, forty five perches; then leaving said original and running with the Western range of Lot number one thousand four hundred and sixty two South, one hundred and eighty perches to a tract of land called "The Diadem," and with this tract West, forty perches to the line dividing the State of Maryland from the State of Virginia, and with this line North, twelve hundred and eighty perches to the end of the third line of a tract of land called "Evansland," surveyed for John Evans the tenth day of March, eighteen hundred and fifty four and reversing this line East, forty perches to the beginning of a tract of land called "Younge Manor," resurveyed for Gen'l John Swan and reversing the given line of this tract South, seven hundred and ninety four perches to the beginning of said given line, thence with the Western range of Lot No. one thousand four hundred and sixty, South, one hundred and thirty two perches to the end of the last or third line of the original, and with the given line thereof East, forty five perches to the beginning.

120 Containing three hundred and sixty eight and fifteen sixteenths acres according to the Certificate of resurvey thereof

taken and returned into the Land Office bearing date the eighteenth day of December eighteen hundred and fifty four, and there remaining, together with all rights, profits, benefits and privileges thereunto belonging: To Have and To Hold the same to them the said Elijah Friend and George Percy as Tenants in Common their heirs and assigns forever.

Given under the Great Seal of the State of Maryland, this nineteenth day of December, eighteen hundred and fifty six.

T. W. LIGON. [THE GREAT SEAL.]

LAND OFFICE OF MARYLAND, *set*:

I certify that the foregoing Patent is proper to be issued.

In testimony whereof I hereto set my hand and affix the Seal of the Land Office of Maryland, this twentieth day of December, eighteen hundred and fifty six.

[Land Office of Maryland.]

JAMES MURRAY,
Comm'r of the Land Office.

121 LAND OFFICE OF MARYLAND, *set*:

I hereby certify, that the foregoing is a true copy of the Patent for "Canrobert," 368 15/16 acres, as recorded in Liber G. G. B. No. 8, folio 503 &c., one of the Record Books of this Office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Land Office of Maryland, this 24th day of June, eighteen hundred and ninety seven.

[Seal of the Land Office of Maryland.]

WM. O. MITCHELL,
Commissioner of the Land Office.

122 [Endorsed:] Md. Exhibit L. Copy Patent, "Canrobert," 368 15/16 acres. E. H. Sincell. Cost \$1.35.

123 John Evans, His Patent, "Evansland," 150 3/16 Acres.

The State of Maryland to all persons to whom these presents shall come, Greeting:

Know Ye that whereas John Evans of Allegany County had surveyed and laid out for him a tract or parcel of land called "Evansland" by virtue of eight acres part of a Special Warrant for thirty acres obtained by George S. Evans out of the Land Office of Maryland bearing date the twenty-eighth day of November, Eighteen hundred and fifty-three and which said eight acres were assigned by George S. Evans to John Evans on the twenty-first day of February, Eighteen hundred and fifty-four as appears &c., and he having fully compounded for the same according to Law.

The State of Maryland doth therefore hereby grant unto him the

said John Evans, the said tract or parcel of land called "Evansland" lying in the County aforesaid.

Beginning for the same at an anciently bounded Ash tree and an anciently bounded White Oak (the latter much decayed) they being the beginning trees (or the two remaining boundary trees) of a tract of land called "Cherry Hill" surveyed for Brook Beall the twenty-fifth day of April Seventeen hundred and seventy-four, and running thence with part of the first line thereof South eighty degrees East thirty-four perches to the beginning of Lot Two thousand nine hundred and fifty-two, then with the first line of this Lot and also with the Western Range of Lots Numbers Two thousand nine hundred and eighty-nine, Two thousand nine hundred and eighty-seven, Two thousand nine hundred and eighty-five, Two thousand nine hundred and eighty-three, Two thousand nine hundred and eighty and Two thousand nine hundred and eighty-one, South five hundred and ninety-seven perches to the South West corner of the last named Lot, then West forty perches to the line separating
124 the State of Virginia from the State of Maryland and with this line North six hundred and four perches to the given line of the said tract of land called "Cherry Hill" and with it South eighty degrees East seven perches to the beginning.

Containing and now laid out for One hundred and fifty acres and three-sixteenths of an acre, according to the Certificate of Survey thereof, taken and returned into the Land Office bearing date the tenth day of March, Eighteen hundred and fifty-four, and there remaining: Together with all rights, profits, benefits and privileges thereunto belonging. To Have and To Hold the same unto him the said John Evans his heirs and assigns forever.

Given under the Great Seal of the State of Maryland this twenty-first day of November, Eighteen hundred and fifty-six.

T. W. LIGON. [THE GREAT SEAL.]

LAND OFFICE OF MARYLAND:

I certify that the aforesaid Patent is proper to be issued. In testimony whereof I hereto set my hand and affix the Seal of the Land Office of the State of Maryland this twenty-first day of November, Eighteen hundred and fifty-six.

[The Land Office of Maryland.]

JAMES MURRAY,

Commissioner of the Land Office.

125 LAND OFFICE OF MARYLAND, set:

I Hereby Certify, that the foregoing is a true Copy of the Patent of "Evansland" 150 $\frac{3}{16}$ acres, patented to John Evans 21st Nov. 1856, as recorded in Liber G. G. B. No. 8 folio 501 &c., one of the Record Books on file in this office.

In testimony whereof, I have hereunto set my hand and affixed

the Seal of the Land Office of Maryland, this third day of June, nineteen hundred and seven.

[Seal of the Land Office of Maryland.]

E. STANLEY TOADVIN,
Commissioner of the Land Office.

126 [Endorsed:] Md. Exhibit M. Copy. John Evans, his Patent, "Evansland" 150 3/16 acres. E. H. SuinCELL.

127 Mr. Zachariah Vansickle, His Patent, "Arabia," 48 Acres.

The State of Maryland, &c., to all persons to whom these presents shall come, Greeting:

Know ye that whereas Zachariah Vansickle of Preston County, in the State of Virginia had surveyed and laid out for him a tract or parcel of land called "Arabia," lying in Allegany County and containing forty-eight acres, by virtue of a Special Warrant for thirty acres, obtained by him the twenty-fifth day of January, Eighteen hundred and forty-seven, as appears and he having fully compounded for said land according to law.

The State of Maryland, doth therefore hereby Grant unto him the said Zachariah Vansickle, the aforesaid tract or parcel of land called "Arabia," lying in Allegany County aforesaid.

Beginning at a post standing in a stone pile, at the end of eighty-seven and one half perches, on the fifth line of a tract of land called "The Granery," and standing also on the line said to divide the State of Maryland from the State of Virginia, and running thence with the last mentioned line North two hundred and sixty-eight perches, to the mouth of the Lane running between said Zachariah Vansickle's Improvement and the Plantation of Lewis Vansickle, then running with said Lane, South seventy-four degrees East thirty-two perches, to the West Range of the Military Lots, and running with said Range, South two hundred and twenty-seven perches, to the fifth line of "The Granery" then reversing said line, by a straight line to the beginning.

Containing, Forty-eight acres, according to the Certificate of Survey thereof, taken and returned into the Land Office, bearing date the twenty-first day of January, Eighteen hundred and forty-eight, and there remaining together with all rights, profits, benefits and privileges thereunto belonging. To Have and To Hold the same unto him the said Zachariah Vansickle, his heirs and assigns forever.

Given under the Great Seal of the State of Maryland, this twenty-seventh day of June, Eighteen hundred and forty-nine.

Witness the Honorable John Johnson, Esquire, Chancellor.

[THE GREAT SEAL.]

JOHN JOHNSON, *Chan'r.*

PHILIP F. THOMAS.

LAND OFFICE OF MARYLAND, *set*:

I hereby certify, that the foregoing is a true Copy of the Patent of "Arabia" 48 acres, patented to Zachariah Vansickle 27th June, 1849, as recorded in Liber G. G. B. No. 5, folio 463 &c., one of the Record Books on file in this office.

In testimony whereof, I have hereunto set my hand, and affixed the Seal of the Land Office of Maryland, this eighteenth day of July, Nineteen hundred and ten.

[Seal of the Land Office of Maryland.]

THOS. A. SMITH,
Commissioner of the Land Office.

129 [Endorsed:] Md. Exhibit N. Copy. Zachariah Vansickle,
his Patent, "Arabia," 48 acres.

130 XX.

During the direct testimony taken in this cause (Record page 1716), the Counsel for the Defendant in this case asked of the Surveyor on the part of the State of West Virginia, Mr. Julius K. Monroe, the following questions, which were answered by Mr. Monroe:

1007th Q. At my request you have also prepared Map No. 3. Will you state what that is intended to represent.

A. "Map No. 3 is intended to represent the eastern boundary of Virginia land grants as held by citizens of West Virginia as the old State line, and the several points located in said line as shown on Maps Nos. 1 and 2," etc.

The attention of the Court is particularly called to Map No. 3 introduced by the defendant in this cause, and to the words contained in the reply of the Surveyor, namely: that it represents "the eastern boundary of Virginia land grants as held by citizens of West Virginia as the old State Line."

The map filed by Messrs. Monroe and Gannett with their Report in this proceeding is practically identical with the Defendant's Map No. 3 above referred to and the lines run and marked in said Map filed with said Report, aforesaid, corresponded very closely with the course and length of the lines as laid down upon said Map No. 3, and furthermore these lines and locations correspond with "the eastern boundary of Virginia land grants" now held by West Virginia, but do not correspond with the line surveyed by the Defendant, West Virginia upon the ground, before this case was brought before the Court.

The State Boundary Line as run and marked by Commissioners Julius K. Monroe and Samuel S. Gannett and referred to in their Report consists of fifteen separate segments or lines. The courses of these several lines vary materially. At times they are east of a north course, sometimes west, and frequently turn at right angles toward the east (as Mon. 10-11, Mon. 19-20, Mon. 21-
131 22 and Mon. 27-28). In one case this eastward offset is no less than 971 feet, viz., at Monuments 19 and 20.

No original boundary could ever have been so irregular as this.

The accompanying affidavits of officials of Garrett County are herewith submitted, to show that a large number of people have been paying taxes upon real estate and personal property into the said County and to the State of Maryland and that many are citizens and voters in Garrett County, and have served upon her juries, who, if the boundary as now marked is confirmed by the Court, would be deprived of their citizenship in Maryland, and suffer loss and injury in time and money in establishing their rights and possession in the State of West Virginia.

132 The Maps of both the Surveyors in this cause, filed prior to the hearing of the case before the Court. Plaintiffs' Map No. 1 and Defendants' Map No. 2 and the testimony all through the Record, show the clash, the interlacing, and the contention between the grants made in this disputed territory by the State of Maryland and Virginia, and these many conflicting interests should have received the closest and most careful consideration of the Commission in the absence upon the ground (with few exceptions) of any objects to guide the Commission to an original, consecutive line.

As the Record shows, the Surveyor on the part of the State of West Virginia attempted in 1894 to retrace an old line which he supposed had been run, but failed to do so. When Maryland made her survey in 1897, she counter located the line as run by West Virginia and in order to show that West Virginia had not run "the eastern boundary of Virginia land grants as held by citizens of West Virginia as the Old State Line." (Record, page 1716). Maryland located certain points in this "Old State Line" as shown by the "Virginia land grants," and these are the points given and referred to in the Record, page 948, which said points were located merely as showing the pretensions of West Virginia to an old line which she had not followed in her own running. These points were never sighted or claimed, on the part of Maryland as being in the State Boundary, but that they were in "The eastern boundary of Virginia land grants as held by citizens of West Virginia as the Old State Line."

133

XXI.

Commissioner Brown would respectfully ask the Court to make some recommendation to the State of Maryland and West Virginia looking to the confirmation of the title to land which will come under the jurisdiction of a new State to the individuals who have now, and have had for a long term of years, title originating in the other State.

As for example the tract of "Elder Spring" Record page 724 was surveyed — 1774, and patent granted by Maryland, this tract now comes under the jurisdiction of West Virginia, while again the Deakins tract of 138 acres surveyed — 1787 and patented by Virginia is and will be in Maryland.

Other lands are similarly affected. This is a serious matter over which citizens and land owners along the border are extremely anxious and the influence of this Honorable and August Court is respectfully asked to prevent any injustice or oppression upon said citizens and land owners by reason of the establishment of a new boundary line, wheresoever the same may run.

Commissioner W. McCulloh Brown further respectfully shows that he has taken no exception to the boundary as marked, where the same has conformed with the fences, holdings and possessions of citizens of the respective states, and where, and when, the lines run by the Commission were upon or close to the boundary as known and acknowledged by the citizens upon both sides of the line, as such, as indicated by this Court in its Decree.

Should this Honorable Court confirm the locations and marking of the lines just run as the boundary between the States of Maryland and West Virginia, by Commissioner- Julius K. Monroe and Samuel S. Gannett, many persons who have held their land under title from the State of Maryland for upward of forty years, in undisputed use and occupancy will suffer grievous wrong and oppression, including possibly a deprivation of land titles and property, while the State of Maryland will be deprived of territory and citizens to which she is justly entitled.

He, however, respectfully makes and urges the exceptions set forth above for the protection of the rights of the State of Maryland and of many of her citizens who are in possession of their lands under titles from Maryland, and who wish to retain their rights and citizenship within her borders, and it is their interests and the rights and obligations involved in them which this Honorable Court is respectfully asked to shelter and preserve. Many of these citizens have been taxpayers, jurors and voters of the State of Maryland for many years, as will appear by the certificates filed herewith as Brown's Exhibit- A-B as part hereof, attached to this Report.

Wherefore your Commissioner, W. McCulloh Brown, respectfully prays:

1. That the report of the said Julius K. Monroe and Samuel S. Gannett, the majority of the Commissioners, be not ratified by this Honorable Court.

135 2. That the several exceptions and protests of the said Commissioner Brown, above set forth, be all and singular sustained.

3. That the matter of the location and establishment of said Boundary Line between said two States be remanded to said three Commissioners, and that testimony and evidence, as offered by said Commissioner Brown and as refused and excluded by said majority of said Commissioners, as aforesaid, be taken and received by said Commissioners, together with such other germane and relevant testimony and evidence bearing upon the location of said Boundary Line, in accordance with said Decree of this Court, as may be offered by or on behalf of either of the said parties to this proceeding.

4. That upon such testimony, as well as upon all other appropriate testimony, evidence, records, facts, surveys, locations, descriptions and other proper and competent proof in the premises, the said Boundary Line may be marked and run in accordance with the said Decree of this Honorable Court, heretofore passed herein, and within such limits of time, as to the Court may seem proper.

5. And that such further order may be passed as the Court may deem proper and necessary herein.

And as in duty bound, etc.

W. McCULLOH BROWN,
Commissioner.

October 30, 1911.

136 Office of Board of Supervisors of Elections for Garrett County.

Edmund Jamison, Clerk.

William R. Offutt, Pres. Thomas J. Johnson. Samuel Lawton.

OAKLAND, MD., Oct. 24, 1911.

This is to certify that the following names of citizens of Maryland were upon the Poll Book of Garrett County, October 1st 1910 and that these men were entitled to vote in said County at the November election of 1910.

Samuel A. Strawser
Charles L. Falkenstein
Clyde H. Falkenstein
Eugene Teats
Richard H. Friend
Herbert Friend
Martin Falkner
Frederick Falkner
Floyd Sines
Sherman Friend
Melvey G. Friend
Thomas J. Schroyer
Wm. H. Lewis
F. Orval Fried
Samuel Falkner

WM. R. OFFUTT, *President*,
E. JAMISON, *Secretary*.

STATE OF MARYLAND,
Garrett County, To wit:

I hereby certify, that on this 24th day of October 1911, before me the subscriber a Notary Public of the State of Maryland, in and for Garrett County, personally appeared Edmund Jamison, the Clerk to the Board of Supervisors of Elections for Garrett County, and made oath in due form of law that the within names of citizens of Maryland were upon the Poll Books of Garrett County, Maryland, on October the first 1910, and that said citizens were entitled to vote in said county at the November election of 1910.

[Seal of James P. Treacy, Notary Public, Oakland,
Garrett Co., Md.]

JAMES P. TREACY,
Notary Public.

137 STATE OF MARYLAND,
Garrett County, To wit:

I, Edward Z. Tower, Clerk of the Circuit Court for Garrett County in the State of Maryland, hereby certify that I have examined the Record Proceedings of said Court, and find that Samuel A. Strawser was drawn as a Juror and served upon the petit jury at the December term, 1910 of said Court; that Charles L. Falkenstein was drawn as a juror and served upon the petit jury at June term, 1911, of said Court; that Samuel Falkner was drawn as a juror and served upon the petit jury at June term, 1911, of said Court; that Sherman Friend was drawn as a juror and served upon the Grand jury at December term, 1908, of said Court, and that Melvy G. Friend was drawn as a juror and served upon the Grand jury at December term, 1906 and upon the Grand Jury at June term, 1911, of said Court, and that Eugene Teets was drawn as a juror and served upon the Grand jury at March term, 1905 of said Court.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Circuit Court, at Oakland, this 23rd day of October, A. D., 1911.

[Seal Circuit Court, Garrett County.]

E. Z. TOWER, *Clerk.*

138 This is to certify that I have examined the Assessment Books of Garrett County, Maryland, and find that the following persons were assessed upon said books and paid taxes to said County for the year 1909 as follows:

On personal property and real-estate.

Abstracts taken for

1909. Samuel A. Strawser, 125 $\frac{1}{4}$ acres Diadem and personal property.

" Clyde H. Falkenstein, 70 acres Diadem and personal property.

" Martin Falkner, 20 acres Diadem and personal property.

" Richard H. Friend, Land sold to Lewis C. Spencer, personal property.

" Sherman Friend, 100 acres Conrobert & part of Yough Manor & Per P.

" Melvy G. Friend, 122 acres C. W. Friend farm & Per. property.

" W. H. Lewis, 40 acres, Browning Manor, and personal property.

" Eugene Teets, 32 $\frac{26}{100}$ acres, "Home & Scales" & per. property

1910. Josiah Moon, 463 acres "Harrington Manor" and personal prop.

Paying Taxes on Personal Property.

1909. Martha J. Falkner, wife of Samuel Falkner.

" J. Jefferson Schroyer.

" J. Orval Friend, hold deed for 50 acres of Browning Maonor but is not assessed.

Paying Taxes on Real Estate.

" Chas. L. Falkenstein, 45 50/100 acres land.

" Herbert Friend, 27 50/100 acres Yough Manor.

" Fred Falkner, 111 acres Elder Spring.

1910. Daniel W. Wilson, 776 acres "Troas."

" Oscar Roth, part of Throas, 157 1/4 acres Re-surveyed.

" D. E. Offutt "Re-survey of All the Chances" 587 acres.

" Chas. Folk "Re-survey of all the Chances."

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1910. Zack Poling "Re-survey of all the Chances" 62 acres.

" Wm. S. Collins, "Browning Manor" or Home (S. Rinard lands) 68 acres.

" Hiram Ringer Agathos 280 acres.

" M. H. Frankhouser "Tudor" 70 acres.

Lillie B. Teats "Browning Manor" 68 1/4 acres.

STATE OF MARYLAND,

Garrett County, to-wit:

I hereby certify, that on this 27th day of October, 1911, before me the subscriber a Notary Public of the State of Maryland, in and for Garrett County, personally appeared Robert L. Fries, Treasurer of Garrett County, and made oath in due form of law, that the within named citizens of Maryland were paying taxes to Garrett County and the State of Maryland in the year 1909.

[Seal of Harland L. Jones, Notary Public, Oakland, Garrett Co., Md.]

HARLAND L. JONES,
Notary Public.

140 [Endorsed:] Md. Exhibit- "A-B." Affidavits of Garnett County Officials. Maryland Exhibit- "A B."

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 1, Original.

THE STATE OF MARYLAND, COMPLAINANT,

vs.

THE STATE OF WEST VIRGINIA.

IN EQUITY.

**SUPPLEMENTAL REPORT OF JULIUS K. MONROE AND
SAMUEL S. GANNETT, COMMISSIONERS.**



Supreme Court of the United States.

In Equity.

No. 1, Original.

THE STATE OF MARYLAND, Complainant,

vs.

THE STATE OF WEST VIRGINIA.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

We, Julius K. Monroe and Samuel S. Gannett, two of the three Commissioners appointed under the decree of the Court rendered May 31st, 1910, "to run, locate, and establish and permanently mark with suitable monuments the said Deakins or 'Old State' Line" as the boundary line between the States of Maryland and West Virginia" etc., respectfully represent that the three Commissioners appointed as above, were engaged from September 17th to October 25th, 1911, in the preparation of the report and maps filed in this case by the majority of the Commissioners, on October 31st, 1911; That this report was prepared and practically completed with the understanding that all the Commissioners would sign it,—thus making it unanimous, and for this reason it was not deemed necessary to go into great detail as to the reason for the location of the boundary as laid out and marked.

On October 25th, 1911, Commissioner W. McCulloh Brown notified us that he would not join in the report, and that he would file a minority report. It was too late, with the limited time at our disposal to rewrite the report and incorporate the details as to the locations and the reasons therefor. We had no information as to the contents of said minority report. Mr. Brown was requested to give such information but declined to do so. We therefore, could make no reply to this separate report until after it had been printed and copies were furnished us by the Clerk of this Court. We respectfully request that this supplemental report be received and read in connection with the Separate Report of Commissioner W. McCulloh Brown.

It is contended by Commissioner Brown that the beginning point of the Boundary Line should have been fixed where the *Meridian* of the Fairfax Stone crosses the south bank of the North Branch of the Potomac River, which is 65 feet west of the Deakins, or 'Old State Line.' The majority of your Commissioners were of the opinion that the point where the *old* North and South line crossed the south bank of the river was meant and intended, and thus located the initial monument. If the initial point had been fixed in the meridian of the Fairfax Stone, it would then have been impossible to run "thence northerly along said (old) line" as directed in the decree.

As to that portion of the line between Monuments 2 and 4, (See pages 4, 5, 6 and 7 of Commissioner Brown's Separate Report).

In this connection we desire to call attention to the maps filed in this case by the Defendant, whereon numerous points are marked indicating objects then standing upon the ground, marking the 'Old Line' as well as the property boundaries,—and also the maps hereto attached marked No. 1, upon which is laid down in black, the Maryland grants, and in red, the Virginia grants, with relation to the Old Line and the Meridian, or "Michler Line." While Mr. Brown complains of our failure to locate the "Four Mile Tree" upon the ground, he carefully refrains from mentioning the fact that we did find and identify several other objects marking this line which were testified to in this case, and which proved to our satisfaction that the line as located passed *very near* if not *exactly* over the point where this 'Four Mile Tree' stood. Mr. Brown also knew that these marks, a number of which were on standing timber, were located during the surveys in this case, in 1894, when this section was covered with virgin forests, and that since that time, the timber, cross-ties and mine props have been cut and dragged off the mountain, and forest fires have burned over practically all this territory, thus destroying many of the land marks which existed in 1894, together with the "Stake & pointers" which marked the place where the 'four mile tree' stood.

Mr. Brown further states, (page 6 of his Separate Report) that by the action of the majority of the Commissioners the line as located deprives the State of Maryland of that territory embraced within the triangle shown upon map "A" opposite page 6 of his report,—of which the State of Maryland "has been in possession for many years" etc. In the testimony of Webster Wilson, to whom Mr. Brown refers,—(Record, page 1166, Q. 37 to 42) Mr. Wilson states that he claims title under "Troas Re-surveyed," which was patented to Richard S. McCulloh and Daniel E. Offutt in 1896, and upon cross-examination immediately following, admits that there was an 'old line' some twelve rods *east* of the 'Michler line.'

(Here follows Map No. 1.)

On Map 1, hereto attached "Troas" as originally located in 1839 is accurately laid down, showing that the west line of this tract did not even reach the 'Old Line,'—and "Troas Re-surveyed," patented in 1896, in which the western line was *extended* as stated in the patent, (Record, page 888) from 105, (inner line of vacancy) to 145 perches to reach the 'Michler Line.' "Siege of Acre" is also laid down as originally patented in 1839, and similarly extended in 1887, to reach the 'Michler line,' (See Record, page 880). It will thus be seen that Maryland citizens could not have been in possession and paying taxes on the strip of land west of the Boundary as represented by the 'Old line' before 1887 or 1896.

As to the F. & W. Deakins 215 acre tract, granted by Virginia, June 10th, 1794, laid down in red on Map 1: While the boundary

MON-1
BOYOMAC

FAIRFAX
(Restored)
STONE

Wilson, Byrne & Morris
- 600 Acs -
Feb'y 1st - 1854

"Siege of Acre"
- 1831 1/4 Acs -
Dec 4th 1839
← West line of original survey

"Siege of Acre Resurveyed"
- 828 3/4 Acs -
April 22nd 1887

← West line as resurveyed 1887

"Michler Line"

1910-'11

Boundary

1102

1101

MON 2

Stone 1801

MON 1

POTOMAC

4-Mile Tree" collected for in
Deakin's 6310 Acs Survey.
"State & Pointers" in
-1804-

"TROAS"
-3131³/₄ Acs-
Dec 20-1839
West line as originally laid out

"TROAS RESURVEYED"
-933¹/₄ Acres-
Jan'y 22nd 1896
West line as laid out in 1896
Chest Oak Snag-Corner
Loar-Identified in
-1910-

Mary Loar

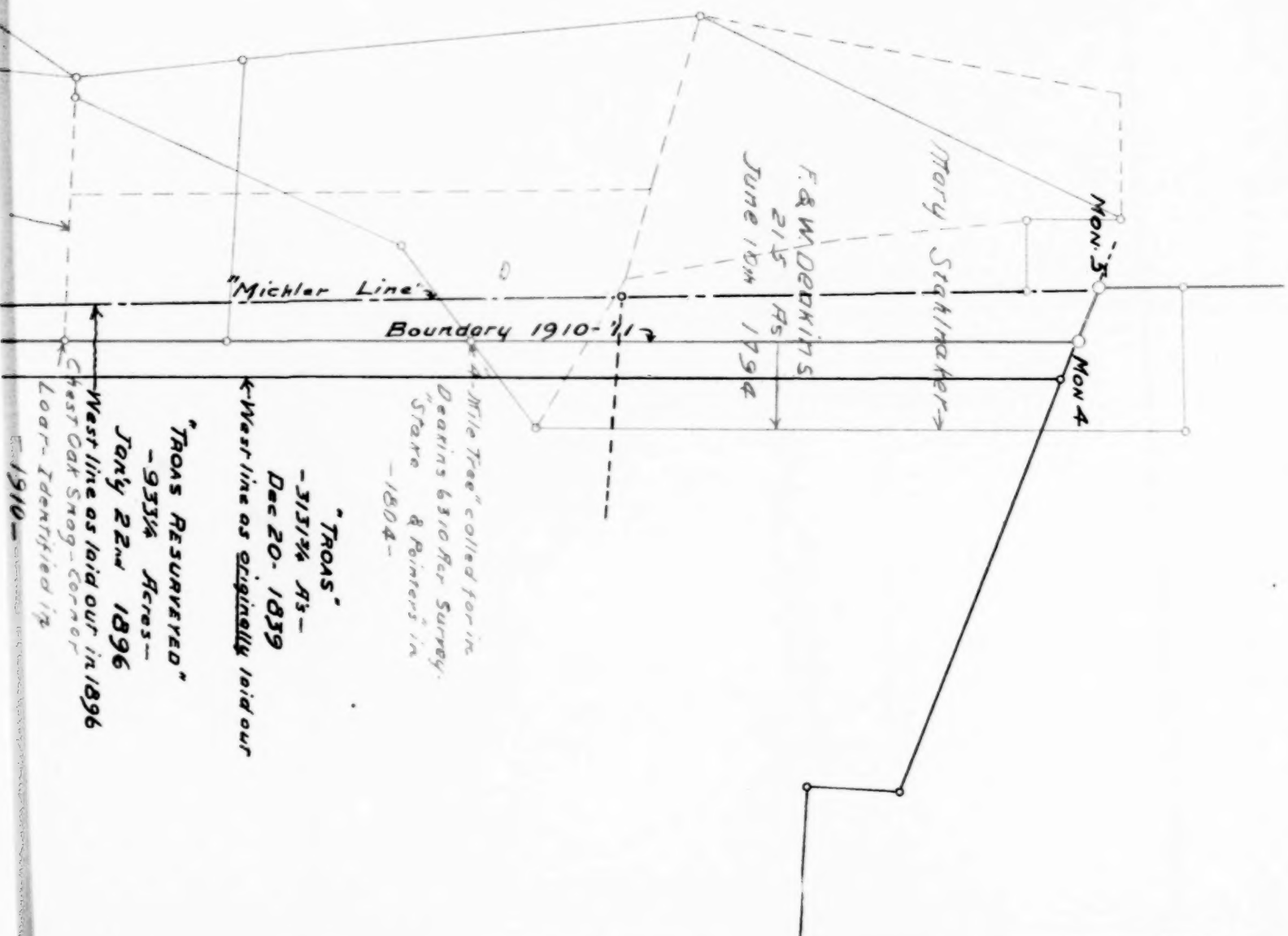
F&W. Deakin's
6310 Acs -
OCT 31st 1794
MON 3
4.5 MTS from "fx Stone"

Reference line from "3 mile Tree" for Beging of "West Pt"

Wilson, Byrne & Morris

-600 Acs -
Feb'y 1st - 1854

"Siege of Acre"
-1831¹/₄ Acs-



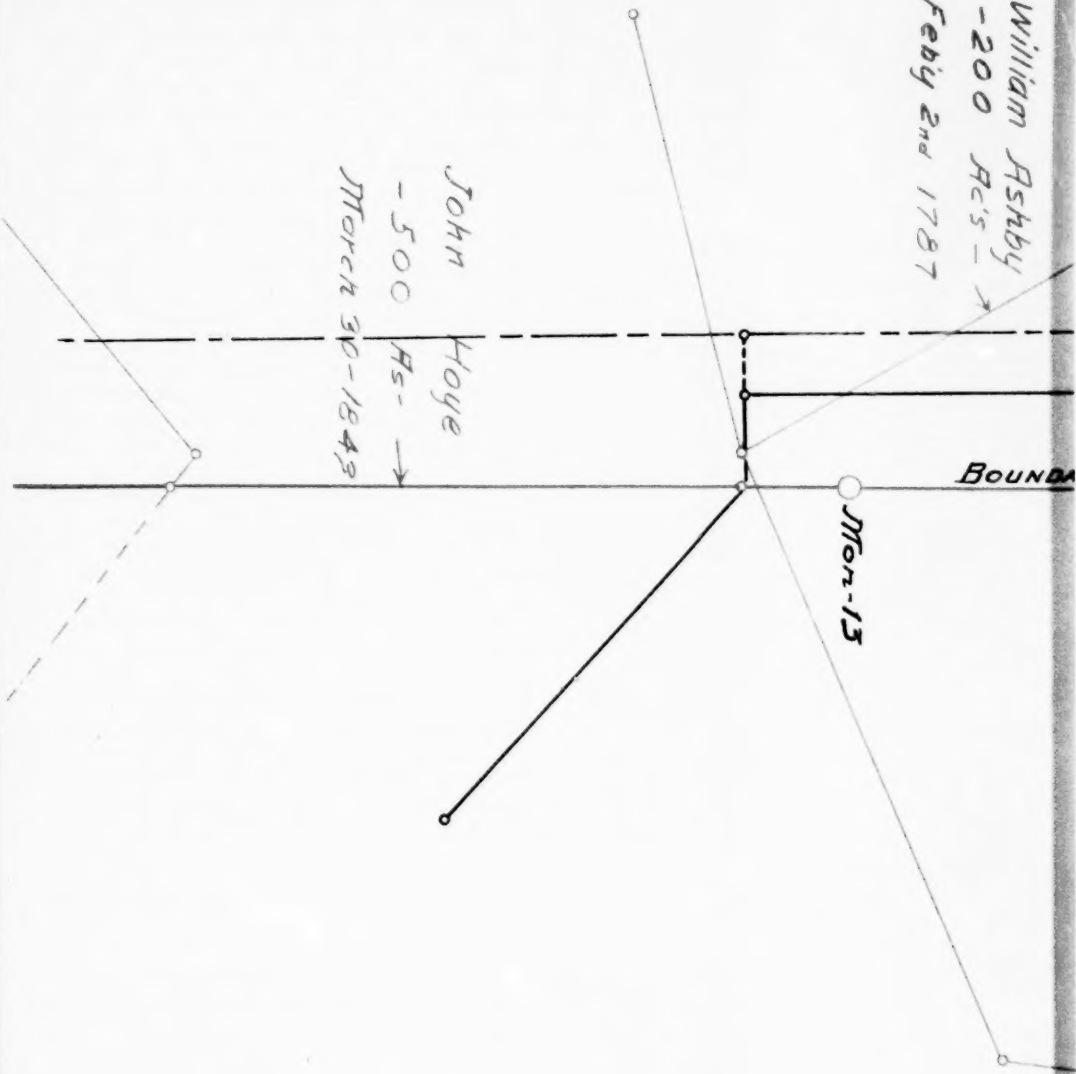
William Ashby
-200 Ac's -
Feb'y 2nd 1787

BOUNDARY

Mon-15

John Hoge

-500 Ac's -
March 30-1843



"Resurvey on All The Chances"
- 1175 1/2 Acres -
March 22nd 1860

Robert Hooker
- 2251 Acs
April 17th 1788

West line of "Resurvey of All The Chances"
as laid out in 1860

West line as "extended" by W. McCulloch Brown
in 1907, to reach Meridian

BOUNDARY 1910-'11

"MICHLER LINE"

William Ashby
- 200 Acs -

John Batorn
- 500 Acs -
May 18th 1793

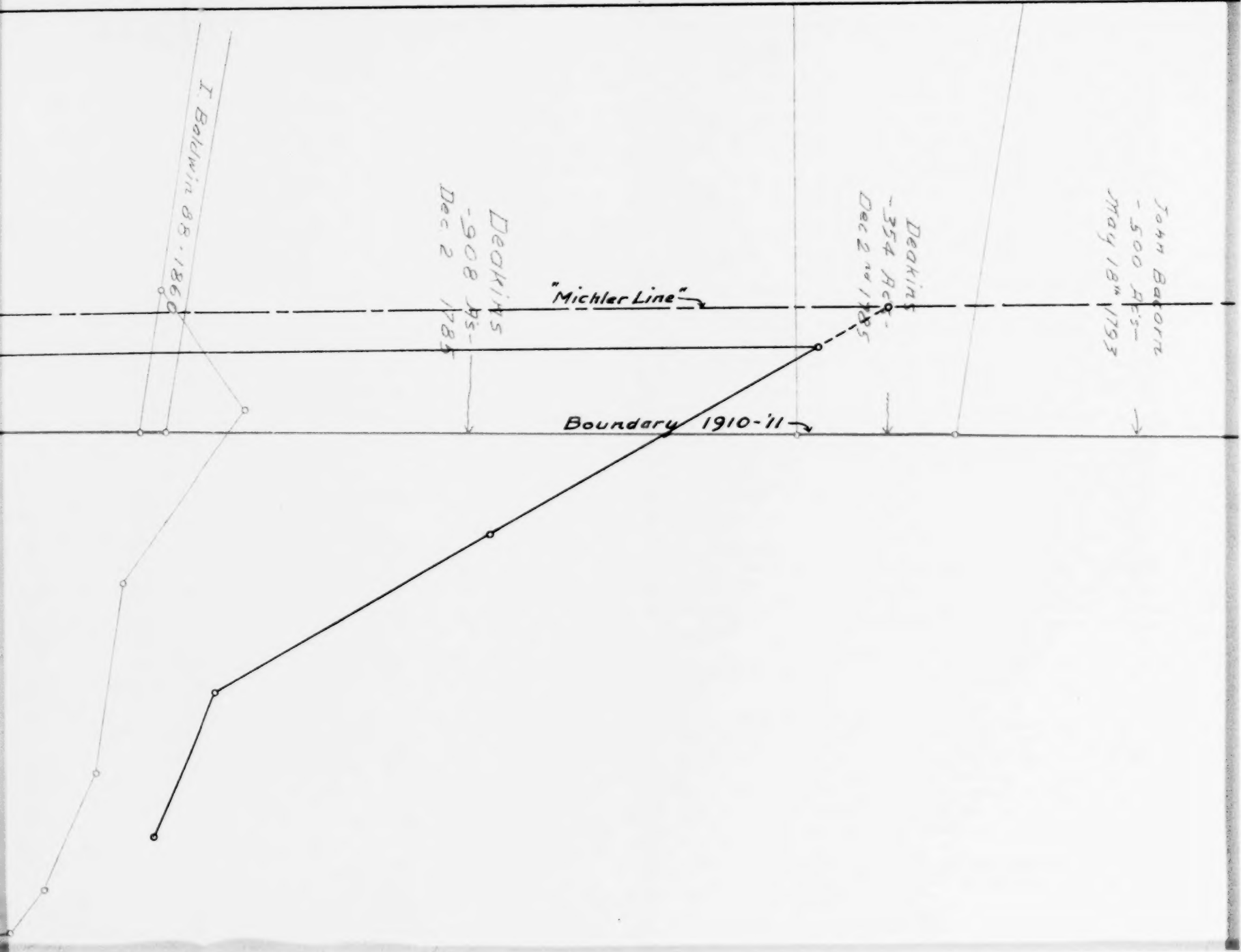
Deakins
- 354 Acs -
Dec 2nd 1785

Deakins
- 908 Acs -
Dec 2 1785

"Michler Line"

Boundary 1910-'11

I Baldwin 88.1860



as located, passes through this tract, as was evident from the facts before us, yet the land records of Preston County, West Virginia show that this title has passed down regularly from Deakins to the present owner, Mrs. Mary Stahlaker, and that taxes on the whole of this tract have always been paid to Virginia and West Virginia, and are now being paid by Mrs. Stahlaker, (a non-resident and unacquainted with the situation) to the eastern line as indicated on the map. The testimony of C. H. Loar, (Rec. p. 1597) and H. J. Frear, (Rec. p. 1616) show that taxes have always been, and are now being paid to West Virginia up to the 'old line' represented by the boundary as here located.

As to that portion of the boundary line north-ward from Monument No. 4, see former report of Commissioners in this case.

As to the tract called "Re-survey On All the Chances:" Mr. Brown, in his separate report, page 15, states that "Mr. Offutt, his grantors and grantees, have paid taxes continuously in the State of Maryland on this property from the beginning, and exercised all acts of ownership and possession over the same." This may be true as to the taxes,—but certainly is not as to possession; there is no testimony in the record in this case to show that Mr. Offutt has had possession of the land,—while there is testimony showing that old Virginia grants cover all the land west of the 'old line'—and a large amount east of it, although that portion east of the 'old line' is not claimed by citizens of West Virginia, and that taxes have always been paid to Virginia and West Virginia, and the land possessed and occupied by citizens of Virginia and West Virginia, up to the 'Old line' under these grants. (See map 2 hereto attached showing Maryland grants in black, and Virginia Grants in red) Mr. Brown further states that this tract was surveyed prior to the running of the 'Michler line' which is probably true, but it must have been laid out in anticipation of it, as the grant clearly states that it runs to the line "recently fixed by Lieutenant Michler" etc. The fact that this tract was laid out in anticipation of, and not actually to the 'Michler line' is shown by its actual position with relation to it, (See map 2.) in which the west line is more than *twenty perches*

(Here follows Map 2.)

east of the 'Michler line.' Mr. Brown, in his return of survey on this tract in connection with this case, in 1907, says: "The Re-survey on All The Chances.—I began said survey at the end of the 5th line of a tract called 'Maryland' pointed out to me by Parker Ashby, a witness produced upon the ground on behalf of the State of Maryland, and ran thence, reversing the 21st line of said tract, 1st. N. 88¾ W. 32 perches, corrected to 52.2 perches, to the 'Bauer-Michler' Meridian" etc.

The majority of your Commissioners did not believe that this tract of land had any connection whatever with the 'Old State, or Deakins Line' and therefore disregarded it.

As regards the claim of Commissioner Brown,—(Brown's Separate Report, page 17) in relation to Josiah Moon;—

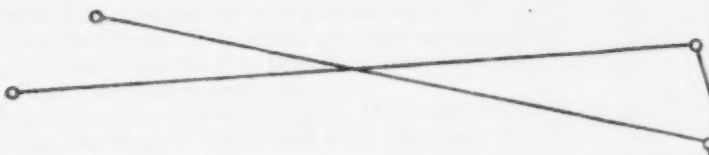
(See Map 3 hereto attached.)

The small triangle referred to is indicated upon map 3, located between the John Bacorn 500 acre, and the Deakins 6000 acre surveys, and contains *one & 1/10 acres only*,—not seven acres, as stated by Mr. Brown. This small triangle is not covered by Virginia grants, and is not claimed by citizens of West Virginia. The north-east corner (stone) of the Bacorn survey, and the southern corner of Lot 1237, and also the corner of the Deakins 6000 acre tract, are all in the North and South line at this point, and it was evident to a majority of your Commissioners that the 'Old line' was continuous here, and it was so located, rather than to change the course of the boundary. It may be proper at this time to call the Court's attention to the fact that your Commissioners never made an off-set, or change in the Boundary Line, at any point, unless by so doing, it would better conform to, and least disturb the titles beyond. This is an instance, which your Commissioners believe, the Court had in mind when, in its opinion, it recommended that "it will no doubt be the pleasure as it will be the manifest duty of the lawmaking bodies of the two States to confirm such private rights upon principles of justice and right applicable to the situation." Your Commissioners were familiar with the facts in regard to Mr. Moon's claim at the time, and therefore did not deem it necessary to take testimony. A similar case in which a considerable strip of land held by citizens of West Virginia is thrown in Maryland, for the same reasons, will be mentioned later.

In regard to the claim of Commissioner Brown, (Brown's separate Report, pages 18 to 42) in relation to the tracts called "Border Life," patented December 28th, 1870; "Browning's Manor," patented February 24th 1857; "Home," patented February 23rd, 1857; and "Scales," patented Feb. 1st, 1830.: On Map 3 hereto attached, these tracts are accurately laid down in black lines, from known points, viz., the Military Lots, which fixes their position. The tract "Scales" does not mention a boundary line in any way, and does not reach the Boundary Line of 1910-11, except as to the very narrow strip extending along the western line of Military lots from Monument No. 20 north-ward. This strip is disregarded in the Virginia grant to John Crane for 776 acres, and also in Maryland grant to Wolfe for 330 acres, and is not held or occupied by any claimant under the title of "Scales."

"Home," granted by Maryland February 23rd, 1857, calls to begin at a "Stone heap supposed to stand on the line dividing the State of Virginia from the State of Maryland, and standing West 170 perches from the end of the third line of Lot No. 1288, and running thence, North 120 perches to the center between two hemlock saplings marked with three notches each; then East 120 perches" etc.—On the following day, February 24th, 1857, the re-survey of "Home," called "Browning's Manor" was granted, which calls to

3



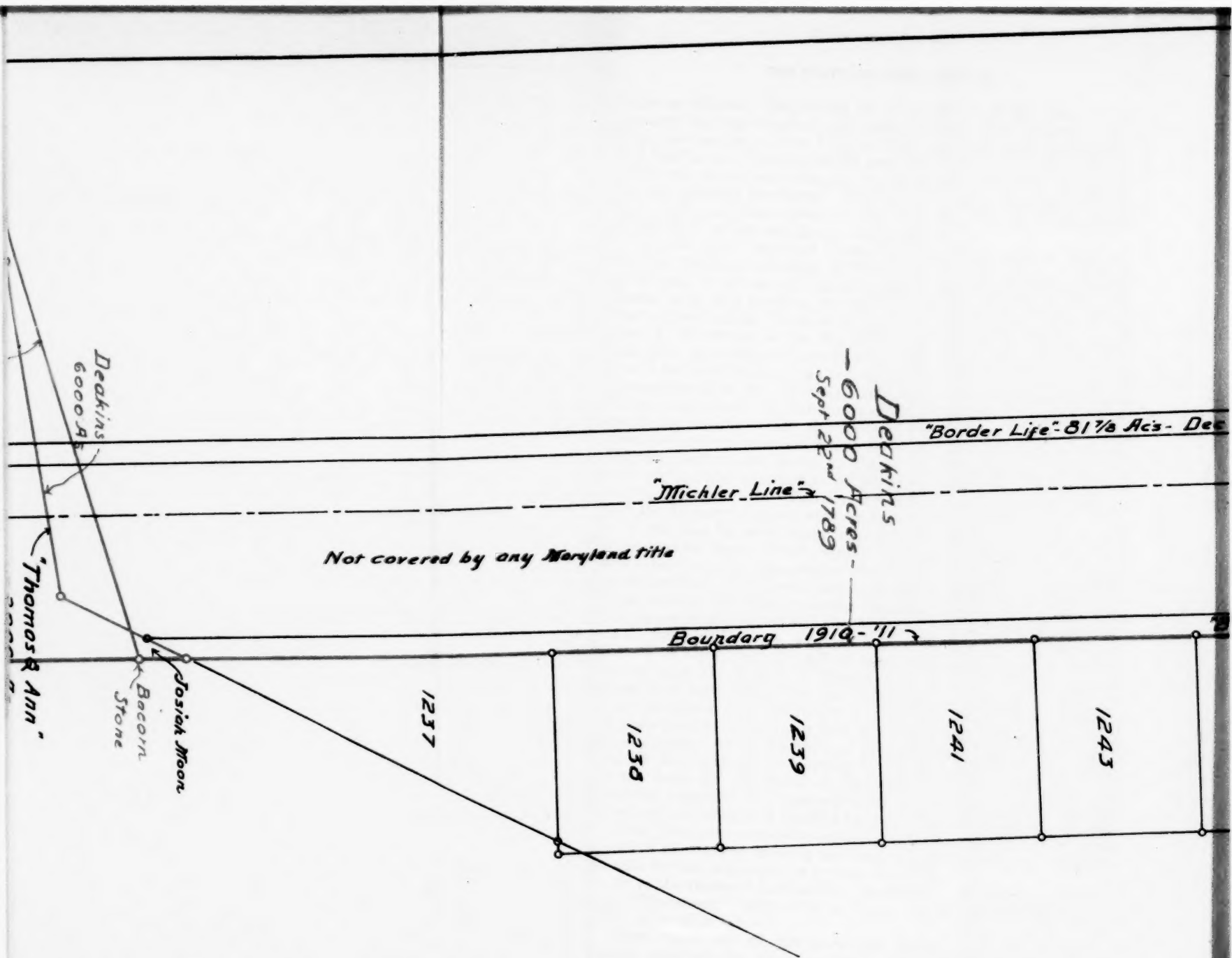
John Bacon
- 500 Acres -
May 18th 1793

"Michler Line" →

Boundary 1910-11

Mon-15

- 2000 A.s -
Dec 6th 1796



cs - Dec 28th 1870

ler.

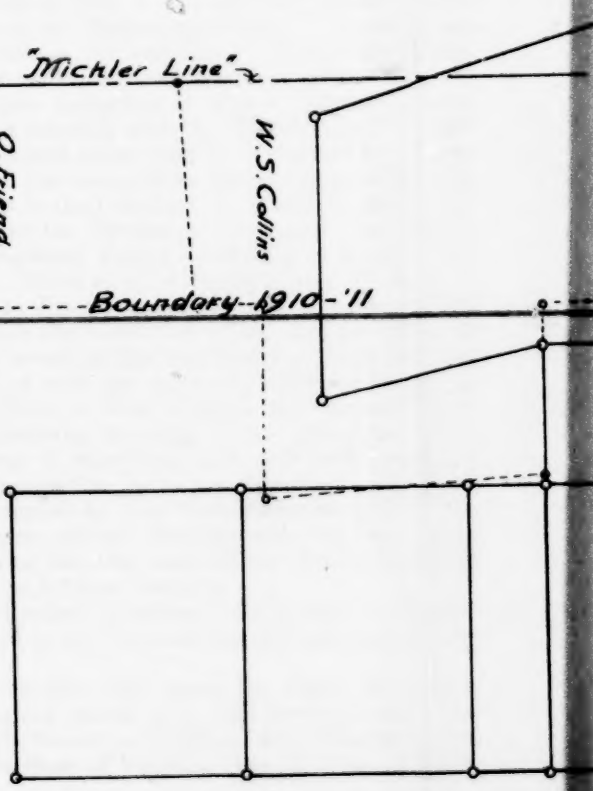
ndc

"Border Life"

1245

Manila Hoy = 3690.45
Deakin's 6000 As

Mon. 16



W.S. Collins

"Mickler Line"

O. Friend

Lewis

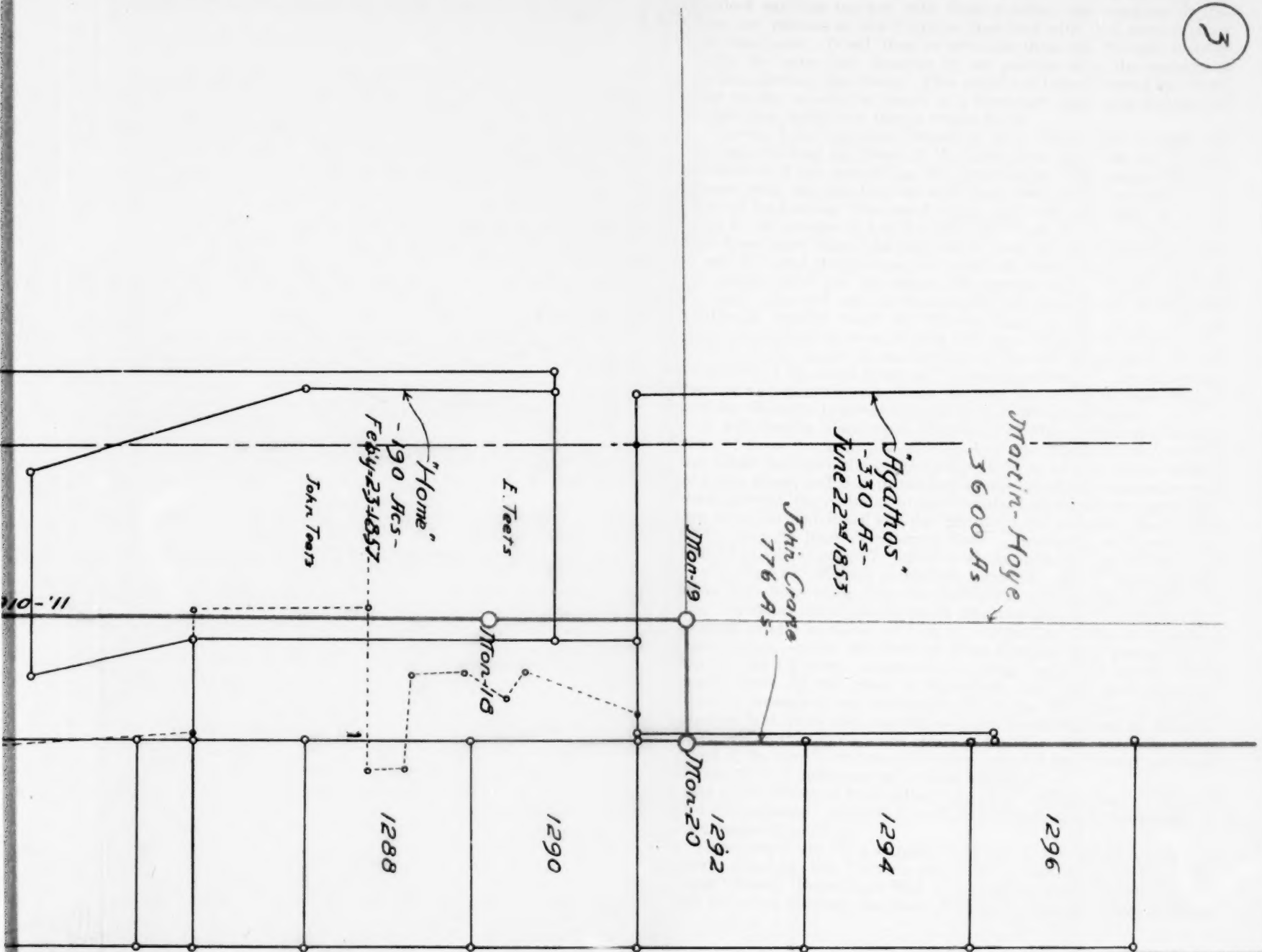
Browning's Manor
Feb'y 24th 1857
- 768 1/4 A -

Shokan

Martin & Hoye
- 3600 A -
Nov. 16th 1809

Mon-17

5



begin as follows: "Beginning for the outlines of the whole at two hemlock saplings marked with three notches, and running thence, West ten perches to the Virginia line and with and bounding on said line"—etc. It will thus be seen that these two surveys, of practically the same date, disagree by *ten perches* as to the location of the line dividing the States. This could not have occurred had there been marks, or other evidence of a boundary line upon the ground at this time, which was then a virgin forest.

"Border Life," patented December 28th, 1870, calls to begin 'on the line dividing the State of Maryland from the State of Virginia at the end of the second line of a tract called "Browning's Manor," thence with and binding on said line South 1320 perches to the tract of land called 'Thomas & Ann,' and with said tract, N. 28 degrees E. 23 perches to Lot No. 1237 and with it' etc.—This tract is laid down upon Map 3, to conform to these calls as to its beginning; it will be noted that it does not strike the tract 'Thomas & Ann' at the points called for, but about 100 perches west of it, and extends $\frac{3}{4}$ mile southward into the Bacon 500 acre survey, and thus located could not possibly reach the Military Lots at any point. If laid down to conform to its calls as to the tract 'Thomas & Ann' and the Military Lots, as also shown on Map 3, it would then extend $\frac{3}{4}$ of a mile beyond the south limits of "Browning's Manor." In either case leaving a large territory between the west line of 'Browning's Manor' and the Military Lots *not covered by any Maryland patent*.

It will also be noted upon inspection of Map 3, that the western lines of these tracts do not coincide with the 'Michler line,' or with any other line upon the ground either held to, or claimed by citizens of either State; and that in the conveyances made in connection with these surveys, the claim as to the boundary as defined by their western lines was abandoned and the 'Michler Line' adopted. See Exhibit 'D D,' page 35 Brown's Separate Report, Browning to Rinard; also Rinard to Elsey, page 27; Offutt et al. to Shahan, page 29; Sines to Lewis, page 31; Wilson to Friend, page 33. All of these conveyances have been made *since* the institution of this suit in 1891. It does not appear from the record in this case that Maryland filed any of these patents or deeds, or took any testimony whatever regarding these claims,—while the State of West Virginia filed patents covering all this territory, antedating by many years any of the above grants made by the State of Maryland, and also took testimony showing possession and occupation up to the 'Old State or Deakins Line' as laid down and marked by your Commissioners in 1910-11.

Your Commissioners were entirely familiar with the facts above noted at the time of running this line, and did not deem it necessary to take further testimony as to these locations.

As to the tracts of land called "Agathos,"—"Ligonia,"—"Tudor" and "Pineswamp" referred to in Commissioner Brown's separate report, pages 45 to 53:—

These tracts are all accurately laid down (in black) on Map 4 hereto attached: the Virginia grants being laid down in red. The tracts 'Home,' 'Browning's Manor,' 'Agathos,' and 'Pineswamp' all call for a line dividing the State of Virginia from the State of Mary-

land, as their western boundary. Upon inspection of the map, it will be found that *no two* of these western lines are common, or in the same line, nor do any of them coincide with the 'Michler line.' Not one of these tracts are held, or even claimed to their western lines as called for in the grants, and only two—'Agathos' and 'Home' are claimed in *part* as far west as the 'Michler line.' It is therefore clear that your Commissioners could not consistently adopt either of these lines as a boundary and comply with the Court's opinion and decree in this case. The record in this case does not show that the State of Maryland produced any evidence or testimony that these tracts of land, or any one of them, defined or located in any way upon the ground, a boundary or dividing line between the two States:—Upon the other hand, the record does show that the State of West Virginia filed numerous grants, deeds and maps, and took testimony showing possession and occupation of this territory up to the western line of the Military Lots, as the 'Old State, or Deakins Line.' Your Commissioners therefore adopted this line as the boundary meant and intended in the opinion and decree of this Court.

On April 4th, 1882, Smith Crane, as Commissioner and Executor of John Crane, deceased, sold and conveyed to Henry Albright the northern portion of the 776 acre tract,—112½ acres, and in this conveyance used the following language: "Being a part of 776 acres in West Virginia, but by the late running of the dividing line in 1859 by Lieut. Michler, lies between the line anciently run and marked between said States, and the line run in 1859." On March 7th, 1900, Henry Albright conveyed a portion of this 112½ acres to Marshall Frankhouser, a resident of the State of Maryland, who transferred it to the land books of Garrett County, Maryland. Crane's heirs also conveyed other portions of the 776 acres to Wardwell in 1866; Joseph Feather in 1864; and Hauger in 1861, all of which parcels are now, and have always been held in Virginia and West Virginia. John Crane owned the tracts 'Ligonia' and 'Pineswamp' and always held and conveyed those portions west of the Military Lots as Virginia territory.

Your commissioners were familiar with all of the above facts as to holdings and location of the several tracts, and therefore did not consider it necessary to take further testimony regarding them.

In regard to Commissioner Brown's claim as to the tract called "The Diadem," and those persons living upon it and paying taxes to the State of Maryland: (Brown's Separate Report, page 54.)

This tract is entirely covered by Virginia grants, some of which date back to 1785,—and none later than 1836, and so far as the testimony in the record in this case shows, has always been occupied, and in possession of citizens of Virginia and West Virginia. It may be true that the Maryland owners of this tract did pay taxes on it to the State of Maryland until about the year 1860, as stated by Mr. Brown, but it is also true that the Virginia owners paid taxes on the same land to the State of Virginia, and, in addition, were occupying and in possession of it, and have occupied and been in possession, and paid taxes on it continuously up to the present time.

Cross 2

Gran

Mon-19

Mon-20

1292

1290

Martin & Hoge

- 3600 Ft -

Surveyed Nov 16-1800

1910-11

"Home"

- 190 Acs -

Feb'y 23-1857

Boundary

"Browning's Manor"

- 768 1/2 Acs -

- Feb'y 24th 1857 -

Reserved on "Home"

4

Jeffers, Elliott, Tremblay & Sime
- 520 Acres -
June 20th 1826

Crane's Feathers
1864

Mon. 23

21-22

Crane's Feathers 1864 "Dor" - 131 1/4 As -
Feb'y 4th 1840

Crane's
"Line"

"Ligonio"
- 149 3/8 Acs -
Feb'y 24 - 1857

"Pineswamp"
153 1/2 Acres
July 3rd 1865

Albright
To - Mch 7 - 900
Frankhouser

"Michler"

Hoye-Martin
East line

John Crane
- 776 As -
Sept 1st 1858

51 As

Wardwell
Nov 7 - 1866

"Agathos"

- 330 As -
June 22nd 1853

Crane's heirs
To) Apl 4th 1882
Albright
Boundary 1910 - 11 1/2

1402

Feb'y 4th 1840

1400

1298

1296

1294

"Michter Line"

Boundary 1910-'11

John 24

1462

1463

Red Oak

Banks

John & Calvin Crane
- 346 Acres -
August 31st 1836

Crane's Heirs
To 200 Acres
Embell Falkenstine
Nov 7-1866

Jeffers, Elliott, Trembly & Sine
- 520 Acres -
June 20th 1826

Crane's Heirs
1864

Line"

Henry Banks
8000 Acres
July 27th 1805

"Canrobert"

3684 A.

Dec 19th 1856

Mon-25

1460

1461

Henry Banks
8000 Acres

"Canrobert"

3684 A.

Dec 19th 1856

Mon-25

4

Vegetation on slope
- 100 ft. S. 1921
- 100 ft. N. 1921
- 100 ft. W. 1921
- 100 ft. E. 1921

100 ft. S. 1921
100 ft. N. 1921
100 ft. W. 1921
100 ft. E. 1921

100 ft. S. 1921
100 ft. N. 1921
100 ft. W. 1921
100 ft. E. 1921

100 ft.

That portion of the 'Diadem' to which Mr. — especially refers as being wrongfully taken from the State of Maryland, is indicated on Map 4 hereto attached, enclosed within the broken red lines, marked 'Crane's Heirs to Ethbell Falkenstine,—200 acres,—Nov. 7th, 1866.' This tract of 200 acres was conveyed to Ethbell Falkenstine by John Crane's heirs, by deed bearing date the 7th day of November, 1866, and is recorded in the Office of the Clerk of the County Court of Preston County, West Virginia, in Deed book 31, page 21. In this deed it is recited that the land therein conveyed lies in Preston County, West Virginia, "but a portion according to the late running of the Maryland and Virginia line (Michler) is situate in the State of Maryland." This tract was entered on the Land Books in Preston County, West Va., and the taxes paid thereon until the year 1868. The Court House of Preston County was destroyed by fire, together with the records, in March 1869. This tract does not appear upon the Land Books thereafter, although the deed was recorded. (See testimony of Ethbell Falkenstine, Rec., page 1465, Q. 26, as to working of roads; page 1466, Q. 34, as to title; Page 1117 and on, as to 'Deakins line.' Also by Mr. Brown, page 1038, as to Redoak.) This parcel of land is now divided into three parcels,—at present owned by Clyde Falkenstine, Charles Falkenstine, (sons of Ethbell) and Samuel A. Strawser, who have heretofore claimed citizenship in Maryland. Your Commissioners were aware of these facts, and also that Wm. H. Lewis and F. Orval Friend, voted and claimed citizenship in Maryland, and therefore did not consider it necessary to encumber our report with their testimony which had no bearing upon the location of the boundary line.

As to the tract called "Canrobert,"—see Brown's Separate Report, page 55:—

(Here follows Map 4.)

This tract is laid down in black lines on Map 4, attached. It will be noted that it extends west of the located boundary. 'Canrobert' was granted by the State of Maryland in 1856, and calls in its west line for "the line dividing the State of Maryland from the State of Virginia," etc. The Henry Banks survey for 8000 acres was granted by the State of Virginia in 1805, and also calls for the boundary between the States. Your Commissioners, in tracing this line, found it well marked, and the testimony in the record of numerous witnesses go to show that the Banks line is well established and the land has been held and taxes paid to Virginia and West Virginia up to the Banks line as the boundary continuously since the grant was issued. Upon the other hand, the State of Maryland filed no title papers and took no testimony to show possession or claim to any part of this territory west of the Banks line, except as to 'Elder Spring,' which lies entirely within the Banks survey. Commissioner Brown, while upon the ground during the survey, admitted that he was unable to find any evidence upon the ground of a line west of the Banks line.

As to that portion of the Boundary Line from Monument No. 26 to the Pennsylvania line,—See Map 5 hereto attached, upon which

(Here follows Map 5.)

the tracts 'Evansland,'—'Arabia' and 'Hammonds Corner' are accurately laid down — black lines,—the Virginia grants in red lines.—See Brown's separate Report, from page 56 to the conclusion of said report.—

It will be observed by inspection of this map that the boundary as located in 1910-11, passes *through* the Henry Deal 328 acre survey, granted by Virginia in 1837. Your Commissioners here adopted the older Banks survey line as the boundary, rather than the Deal tract, until they reached the north line of the Deal 328 acre tract, for the sake of uniformity in the boundary, and for the same reason did not extend the Boundary east at Monument No. 28 to the eastern limit of the Deal 367 acre survey, since this would have required another angle to the west near Monument 29 to reach and trace the accepted boundary beyond. As laid out, the boundary is practically straight from Monument 28 to the Pennsylvania line. That portion of the Deal 367 acre tract lying east of the boundary, as well as the small triangle immediately north are held under the Virginia titles, and undisputed, and the titles should be confirmed in the present holders.

It will be noted that 'Evansland' as laid down extends slightly west of the boundary southward to Monument 28. This is a junior patent, and it does not appear that any claim has ever been made under this title west of the Spurgeon and Deal survey lines, which are both fenced and well identified upon the ground.

As to the Deal tract of 328 acres lying south of Monuments 27 and 28: Attention is called to the deposition of Melville Friend, pages 1479, 1480 and 1481 of the record in this case, as to the title he holds, and pages 1976 and 1978, of the record, for prior deeds of conveyance. Melville Friend now resides upon that portion of the Deal survey enclosed within the broken red lines. Sherman Friend, Samuel Falkner, and Martin Falkner reside upon the southern portion of the same tract; Herbert Friend resides on a portion of the Banks land; Frederick Falkner on the tract 'Elder Spring,' which lies directly west of the Deal tracts.

The tract called 'Arabia' calls to run with the State line and also with the west line of the Military Lots; since this tract is only 34 perches wide, and the strip between the boundary line and Military Lots is 44 perches wide, nothing further need be said concerning it.

As to the tract called 'Hammonds Corner': The west line of this tract is *identical* with the *east* line of the Virginia grants, and the boundary follows this line. There is absolutely no contention between the citizens of the two States as to the boundary from Monument 28 north to the Pennsylvania State Line; Citizens of both States pointed out to your Commissioners numerous land marks as standing in the 'State Line' during the running of that portion of the boundary.

"Elder Spring"

Banks
8000 Acres
July 27th 1805 →

"Canrobert"

Boundary 1910

Mar-26

Bound

Risk

Jesse Spurgeon
-240 As-
Oct 21st 1837

"Evansland"
-150 ³/₁₆ As-
Nov 21st 1856

Mon-29

Henry Deal
-367 As-
May 30th 1834

Mon-27
Mon-28
Chestnut
Stone

Henry Deal
-328 As-

Boundary - 1910-11

Mon-30

Mon-31

Mon-32

"Arabia" 48 As
June 27th 1849

48 As
27th 1849

Mon-32

Mon-33

"Hammonds Corner"
- 169 1/2 Acres -
Sept 5th 1842

2

1000 1000 1000
1000 1000 1000
1000 1000 1000

Control

1000 1000

1000 1000

1000 1000

We desire to say in conclusion that the boundary line as laid out and marked in 1910-11, in our judgment, conforms as nearly as it is possible to make it, to the opinion and decree of this Court, and as located least disturbs the titles of citizens residing along it; and that, with very rare exceptions, the citizens of both States residing along the boundary as located, are satisfied.

Very respectfully submitted.

JULIUS K. MONROE,
SAMUEL S. GANNETT,
Commissioners.

January 3rd, 1912.

[Endorsed:] Supreme Court U. S. October Term, 1911. Term No. 1, Original. The State of Maryland, Complainant, vs. The State of West Virginia. Supplemental report of Commissioners Monroe and Gannett. Filed January 26, 1912.

[15376]

RECEIVED MAY 14 1913
FILED

MAY 14 1913

JAMES H. MCKENNEY,

Supreme Court of the United States

OCTOBER TERM, 1911

No. 1. ORIGINAL.

STATE OF MARYLAND,

Complainant,

vs.

STATE OF WEST VIRGINIA,

Defendant.

In Equity.

Brief on Behalf of Maryland.

EDGAR ALLAN POE, *Attorney-General.*

ISAAC LOBE STRAUS, *Counsel.*

Supreme Court of the United States

IN EQUITY.

OCTOBER TERM, 1911.

STATE OF MARYLAND,

Complainant.

VS.

STATE OF WEST VIRGINIA,

Defendant.

NO. 1 ORIGINAL.

BRIEF FOR THE STATE OF MARYLAND IN SUPPORT OF THE
SEPARATE REPORT, THE EXCEPTIONS AND THE PRAYER
FOR RELIEF FILED BY COMMISSIONER W. McCULLOH
BROWN ON BEHALF OF THE STATE OF MARYLAND AND
AGAINST THE GRANTING OF THE MOTION TO CONFIRM
THE REPORT OF COMMISSIONERS MONROE AND GAN-
NETT.

INTRODUCTORY.

Whilst it is not intended to question the statement made
by the Commissioners, Messrs. Monroe and Gannett, that
they thought Mr. Brown would unite with them in making
their report unanimous, it is respectfully submitted that

from the exceptions and protests filed by Mr. Brown from the very outset of the Survey and throughout its progress, which exceptions and protests were never withdrawn or abated, Messrs. Monroe and Gannett ought to have known very well that Mr. Brown would not unite in their report, but would present his Exceptions to this Court. Each exception is in itself a dissent upon Mr. Brown's part from the course pursued by the majority Commissioners, and the only object in filing the Exceptions was to present them to the Court as representing the views of Maryland as distinguished from the views of West Virginia. Messrs. Monroe and Gannett, therefore, are hardly justified in the explanation or apology which they give to the Court for the extraordinary brevity of their report, and the mere generalities of which it is made up, that they supposed it would be unanimous and unexcepted to by Mr. Brown on the part of the State of Maryland.

The Court is respectfully and earnestly assured that the Mr. Brown's dissent and exceptions are preferred with reluctance and regret and wholly out of a sense of duty. Mr. Brown has taken no exception to the boundary as marked where the same has conformed with the fences, holdings and possessions of citizens of the respective States and where and when the lines run by the Commission were upon or close to the boundary as acknowledged and adopted by the citizens upon both sides of the line, as indicated by this Court in its Decree. But should the location and the markings of the lines run as the boundary between the two States by Messrs. Monroe and Gannett be confirmed by this Court, many persons who have held their land under title from Maryland for more than forty years—more than twenty years before the Statute of Maryland authorizing this suit was passed—in undisputed use and occupancy will suffer injury and wrong including possibly a deprivation of land titles and property, while the State of Maryland will be

deprived of territory and citizens to which she is justly entitled. It is for that reason that Mr. Brown on behalf of the State of Maryland and as one of the Commissioners appointed by this Honorable Court to execute its Decree makes and urges the acceptance.

From the beginning of the work of the Commission, in the spirit above mentioned, Mr. Brown filed with Mr. Monroe, the Secretary of the Commission, at frequent intervals, his exceptions to locations which were being made setting forth distinctly the grounds thereof and in connection with and for the most part as the basis of these exceptions and of his objections to the locations referred to, he offered testimony upon points which he considered material and with the view of properly carrying out the intent of the Opinion and Decree in this case. The majority of the Commissioners refused to consider his Exceptions or the testimony offered or his requests with reference to the location of the line at the various points in question and proceeded without any heed or regard whatsoever to the same.

There was no other course open to the State of Maryland or to Commissioner Brown than to bring these Exceptions and the matter of the rejected testimony and evidence to the attention of this Honorable Court in a separate report, confident that the Court would give the subject that due consideration which the majority of the Commissioners denied it.

After the rendition of the Decree in this Case, Maryland abandoned and put aside entirely, as it was her duty to do, all claim to the Michler Line or to any other meridian line, and fully accepted, and now fully accepts, with all respect and submission, the learned opinion and judgment of the Court. All through the Court's Opinion she finds evidences that it intended that the proposed boundary line should be so run as least to disturb the settled rights and possessions of the citizens and residents residing along it. Where the Deakins or Old State Line was not plainly shown to exist, the

boundary was to be established, as near to it as may be, where the people living along the disputed line had by their holdings and possessions, sufficiently confirmed by time, "*recognized and adopted*" the line of division or boundary.

Maryland's original argument and claims were based upon her Charter calls, and a meridian line established thereby. The claim of West Virginia was not based upon any line, but upon individual titles and claims of possession. The Court decided in favor of the latter contention, but when it came to a question of possession at various points along the proposed boundary as indicated by the Decree the Court did not say that the grants and claims of Virginia and West Virginia based upon possession should alone be considered. On the contrary, it is to be assumed that the Court intended that the principle it had laid down and which was the *ratio decidendi* of the case, should be equally and impartially applied to both the parties concerned.

The construction put upon the Decree, however, by the majority of the Commissioners would seem to be that in all cases every possible claim which could be made by West Virginia based upon possession and holdings should be satisfied and granted; but that holding and possession by citizens of Maryland, whereby the boundary between the States had been "*recognized*" and "*adopted*," should be ignored.

The object of the majority of the Commissioners appears to have been not so much to follow the Deakins Line as the most easterly line of tracts to which Virginia or West Virginia may have issued patents. On the other hand, they absolutely declined to acknowledge or consider any grants by Maryland or any holding or possession west of the Military Lots, and when they ran the line west of the Military Lots they declare it a *concession* upon their part.

Yet under such Maryland grants numerous Maryland citizens are in present possession under title, and have been so for upwards of 50 years.

When such holdings and possession under such grants tended to show a *recognition* and *adoption* of the boundary in the disputed territory, it would seem to be the plain meaning and intent, as it is the manifest equity and reason, of the Court's Decree that such holdings and possessions should receive consideration in the matter of the location of the line.

As has been said above, West Virginia made her fight upon possession; Maryland upon her Charter calls. When the Court decided in favor of West Virginia's contention, it certainly did not wish or intend to do Maryland or her citizens the injustice of disallowing and ignoring any long-continued actual possession which the State and her citizens may have had.

West Virginia, as the action and the report of her Commissioner discloses throughout, seeing her advantage before the Commission in refusing to take any testimony or to admit any papers or evidence as to patents and titles in the case, at once adopted that course greatly to the detriment of Maryland and her citizens. The attention of the Court is called to the unanimity with which the boundary line proposed by the majority of the Commissioners corresponds with the eastern line of Virginia and West Virginia land grants.

So that from the beginning to the end of the survey there was a refusal upon the part of the majority Commissioners to receive testimony tending to show that by recognition and adoption by the people along the line as shown in their possessions and holdings, Maryland was entitled to a boundary west of the Military Lots.

West Virginia admits that the Commissioners did not follow the Deakins Line for about five miles from Monument No. 5 northward because there was an older line and because the citizens of both States were in possession to that line. Maryland claims that as it is recited in a number of patents of land in the disputed territory that they are upon a line north from Fairfax Stone, and that as existing testimony

and evidence tend strongly to show that when these surveys were made Maryland was practically in possession to that same line produced southward, the boundary should have been made continuous from the point upon the Potomac River due north of Fairfax Stone to about Monument No. 8.

Furthermore, the query presents itself—if the Deakins Line could be left in one case when it did not materially affect West Virginia, why not in another case where a failure to leave it would transfer citizens of Maryland to West Virginia and bring their holdings and possessions into question.

Finally, by way of introduction, and before proceeding to take up the Exceptions of Maryland, filed by Mr. Brown to the Majority Report, we beg respectfully to call the attention of the Court to the fact that the law of Maryland requires surface measurements in making land surveys, and that owing to the hilly character of the country here in question, the only possible means of accurately defining the grants is to survey them upon the ground, it being often impossible to make the lines close upon a paper survey.

And, furthermore, the inception of title to Maryland grants is either the date of the warrant of re-survey, or that of the survey certificate, at which time the money is paid to the State for land in question. The patent is frequently not issued for a number of years subsequently and is but a confirmatory receipt.

THE DECREE.

The provisions of the Decree of this Honorable Court in this cause, which bear upon the questions now presented for the consideration of the Court by the Report of the majority of the Commissioners and by the Separate Report and Exceptions of Commissioner W. McCulloh Brown are as follows:

“First: That the true boundary line between the
“States of Maryland and West Virginia is ascertained
“and established as follows:

“Beginning at the common corner of the States of Maryland and Virginia on the southern bank of the Potomac River at low water mark at or near the mouth of the Shenandoah River (near Harper’s Ferry), and running thence with the southern bank of the Potomac River at low water mark and with the southern bank of the North Branch of the Potomac River at low water mark, to the point *where the north and south line from the Fairfax Stone crosses the said North Branch of the Potomac, and thence running northerly as near as may be with the Deakins or Old State Line to the line of the State of Pennsylvania.*

“That Julius K. Monroe, William McCulloh Brown and Samuel S. Gannett, be and they are hereby appointed Commissioners to run, locate and establish and permanently mark, with suitable monuments, the said Deakins or Old State Line as the boundary line between the States of Maryland and West Virginia from said point on the southern bank of the North Branch of the Potomac River to the Pennsylvania Line, in accordance with the opinion of this Court heretofore filed in this case and with this Decree, the said line to be run and located as far as practicable as it has been generally recognized and adopted as the boundary line between the said States and not as conforming, except to a limited extent, to the western boundary of the Maryland Military Lots, as said lots are now located and held.” * * *

“That said Commissioners may arrange for their organization, their meetings and the particular manner of the performance of their duties and are authorized to adopt all ordinary and legitimate methods in the ascertainment of the true location of said boundary line, including the taking of evidence under oath and calling for papers and documents, but in the event evi-

"dence is taken, the parties shall be notified and permitted to be present and cross-examine the witnesses; *"and all evidence taken by the Commissioners and all exceptions thereto and actions thereon shall be certified and returned with their reports."*

"Said Commissioners are also *at liberty* to refer to and consult the printed record in the cause so far as they may think proper to enable them to discharge their duties under this Decree. * * *

"It is further ordered that the Commissioners do proceed with all convenient dispatch to discharge their duties in running, locating, establishing and marking said line *as herein directed* and make their report thereof and of their proceedings in the premises to this Court on or before the first day of January, 1911, etc." (Maryland vs. West Virginia, 217 U. S. pages 582-584.)

OPINION OF THE COURT.

In its Opinion in the case, this Court said:

"The evidence contained in this record leaves no doubt that after the running of the Deakins Line the people of that region knew and referred to it as the line between the State of Virginia and the State of Maryland" * * * (217 U. S., page 38.)

"These recitals from Lieutenant Michler's report, if the record were lacking in other evidence, would leave little doubt that there was an old boundary line, generally adopted, and that the adoption of the true meridian line, which Lieutenant Michler ran, would cause great litigation because of the acquiescence of the people in the Old Boundary Line, the Deakins Line." * * * (217 U. S. 39.)

"Even after the Michler Line was run, and marked, "the testimony shows that the people generally *adhered* "to the old line as the true boundary line." * * * (217 U. S., page 240.)

"The testimony shows that the people living along the "Deakins Line worked and improved the roads on the "Virginia side, as a general rule, up to this line; corre- "spondingly Maryland worked the roads on the other "side of the line." * * * (217 U. S., p. 40).

"A perusal of the record satisfies us that for many "years occupation and conveyance of the lands on the "Virginia side has been with reference to the Deakins "Line as the boundary line. The people have generally "accepted it and have *adopted* it, and the facts in this "connection cannot be ignored. In the case of Virginia "vs. Tennessee (148 U. S., 503, 522, 523) Mr. Justice "Field, speaking for the Court, had occasion to make "certain comments, which were pertinent in this con- "nection, wherein he said: 'Independently of any effect "due to the compact as such, a boundary line between "states or provinces, as between private persons, which "has been run out, located and marked upon the earth, "and afterwards recognized and acquiesced in by the "parties for a long course of years, is conclusive, even "if it be ascertained that it varies somewhat from the "courses given in the original grant; and the line so "established takes effect, not as an alienation of terri- "tory, but as a definition of the true and ancient bound- "ary' ". * * * (217 U. S. 41-42).

See also quotations from *Indiana vs. Kentucky*, 136 U. S., p. 510; *Rhode Island vs. Massachusetts*, 4 Howard, 639; *Vattell on The Law of Nations*, p. 260; *Wharton on International Law*, p. 260; *Louisiana v. Mississippi*, 202 U. S., p. 53 on pages 42-44 of the Opinion.

"An application of these principles cannot permit us
 "to ignore the conduct of the States and the belief of
 "the people concerning the purpose of the boundary line
 "known as the Old State or Deakins Line and *to which*
 "*their deeds call as the boundary of their farms in*
 "*recognition of which they have established their alleg-*
 "*iance as citizens of the State of West Virginia and in*
 "*accordance to which they have fixed their homes and*
 "*habitations.*" * * * (217 U. S., p. 44).

"The effect to be given to such facts as long con-
 "tinued possession, gradually ripening into that condi-
 "tion which is in conformity with international order'
 "depends upon the merit of individual cases as they
 "arise. In this case we think a right in its nature
 "prescriptive has arisen, practically undisturbed for
 "many years, not to be overthrown, without doing vio-
 "lence to principles of established rights and justice
 "equally binding upon the State and individuals."
 * * * (217 U. S., p. 44).

"We think for the reasons which we have undertaken
 "to state that the Decree in this case should provide
 "for the appointment of Commissioners whose duty it
 "shall be to run and permanently mark the Old Deakins
 "Line, *beginning at a point where the north and south*
 "*line from the Fairfax Stone crosses the Potomac River*
 "and running thence northerly along said line to the
 "Pennsylvania border." (217 U. S., p. 45).

"Upon the whole case, the conclusions at which we
 "have arrived, we believe best meet the facts disclosed
 "in this record, are warranted by the applicable prin-
 "ciples of law and equity, and *will least disturb rights*
 "*and titles long regarded as settled and fixed by the*
 "*people most to be affected.*" * * * (217 U. S., p. 46).

"A Decree should be entered settling the rights of
 "the State to the western boundary, and fixing the same,

"as we have hereinbefore indicated, to be run and established along the old line known as the Deakins or Old State Line; and Commissioners should be appointed "to locate and establish said line as near as may be."

I.

Messrs. Monroe and Gannett Established the Very Beginning of Their Line (Monument 1) and the Basis of Their Survey Contrary to the Plain, Express Direction of the Decree.

This is the ground of Commissioner Brown's first exception.

Both the Opinion and the Decree of the Court, as appears above, declare that the western boundary line between the two States shall *begin* at low water mark on the south bank of the North Branch of the Potomac at "the *point* where the *north and south line* from Fairfax Stone crosses said North Branch of the Potomac."

When it thus repeatedly located the initial point of the boundary line by means of the "*north and south line*" from the Potomac the Court was speaking precisely and advisedly. The Court meant what it said—"a *north and south line*," not a northeasterly line.

When the Court, immediately afterwards in its Decree, proceeded to direct how the line should run *from* its initial point (established by the "*north and south*" line from the Fairfax Stone) the Court aptly used an entirely different expression, namely, "thence *northerly as near as may be* with the Deakins or Old State line, etc."

If the Court had intended that the beginning of the proposed boundary line should be "ascertained and established" where Messrs. Monroe and Gannett have located it, it would

have been an exceedingly simple and easy matter for the Court instead of designating the "point where the north and south line from the Fairfax Stone crosses the said North Branch," to have said, "the point where the northerly line from the Fairfax Stone to the beginning of Military Lot No. 1 crosses the said North Branch."

But that is precisely what the Court did *not* say in either its Opinion or its Decree. The Court said in plain and certain terms that the line should begin at the point where Commissioner Brown contends it should begin, namely, at low water mark on the south bank of the North Branch of the Potomac, *where the north and south line from Fairfax Stone crosses said North Branch.* Messrs. Gannett and Monroe can not find any justification for thus disregarding the plain direction of the Court's Opinion and Decree and beginning the line to the detriment of Maryland, at a point about 65 feet east of the point where the Court ordered it to begin.

This departure from the Court's Decree, without the least regard to Commissioner Brown's protest and contention based upon the deliberate and well considered language of the Court, and with respect to the initial and most important point in the line, is a material injustice to the State of Maryland, from which the Honorable Court should protect her by sustaining Mr. Brown's first exception and ordering the Commission to begin the line as plainly directed by the Decree and to run it from such initial point accordingly.

See Brown's Sep. Rep. and Exceptions, pp. 2-3.

That the first monument placed by the Commissioners is 65 feet east of the point where the "north and south line" crosses said North Branch appears from the filed notes at page 20, table No. 1, of the Report of Messrs. Monroe and Gannett. The distance from Fairfax Stone to the river,

3,989.13 feet, multiplied by the tangent of the angle 56 minutes, $.01629 = 64.99$ feet, as the distance of Monument No. 1 east of the north and south line from Fairfax Stone.

II.

The grounds of the second exception preferred by Mr. Brown are so fully stated in his Separate Report at pages 3 to 7 as to make much additional discussion herein with respect to it unnecessary.

As appears in the excerpts from the Decree above cited, it obviously contemplates that the Commissioners should "adopt all ordinary and legitimate methods in the *ascertainment of the true location of the said boundary line*" and these "methods" are expressly declared to include "the *taking of evidence under oath and calling for papers and documents.*" And not only that, but, further, when testimony is taken, the right to be notified, to be present and to cross-examine the witnesses is secured to the parties; besides which the decree also prescribes that "all evidence taken by the Commissioners and all exceptions thereto and action thereon shall be *preserved and certified and returned with their report;*" and finally, the Commissioners are required not only to make a report of the location and marking of the line, but also "*of their proceedings in the premises*" to this Court.

Would any one imagine that with all these provisions carefully and specifically made for the "meetings" of the Commission and for "the *particular manner of the performance of their duties*" and for the ordinary and legitimate methods in the ascertainment of the true location of the said boundary line" and for the "taking of evidence under oath" and for "the calling for papers and documents;" for "notice" to the parties, and the right "to be present" and

to "cross-examine the witnesses," and for the *preservation, certification and return of "all evidence taken" and "all exceptions thereto"* and "action thereon" and for a report "of their proceedings in the premises"—would any one think or fancy that the whole line was to be located and run and marked *without any witnesses being called* and examined and without any documentary proof being adduced to throw light upon the *true location of the line which the Court in its opinion and decree ordered to be run and established as the boundary?* That witnesses offered again and again to be examined on behalf of the State of Maryland should be arbitrarily ignored and not permitted to utter a syllable to support a single claim or contention upon the part of the Commissioner representing Maryland? That citizens of Maryland themselves appearing before the Commissioners to protect their allegiance and their property titles and asking to be allowed to testify should be peremptorily denied all hearing whatsoever and dismissed without the slightest opportunity to state what they knew about the boundary which was to be located as recognized and adopted by the people living along it? That no proof at all, either oral or documentary was to be adduced before these Commissioners so that it as well as the "proceedings" and "action thereon" might be "*preserved and certified and returned*" to this Court?

The Court is respectfully requested to note *that not one single offer of testimony, either written or parol, made by Commissioner Brown was accorded the least attention by Commissioners Monroe and Gannett—not one single witness permitted to testify—not one document received for inspection.* Every offer of proof was met by a refusal to take the least notice of it.

And upon their part *only two* witnesses were sworn and examined by Messrs. Monroe and Gannett during the whole course of their survey. One, Dorsey Ashby, to point

out the beginning of the tract called "Maryland" and the other, Peter F. Nine, with respect to a corner of the tract called "Eelshine."

Messrs. Monroe and Gannett in their Report and particularly in their Supplementary Report, again and again attempt to explain and justify their refusal to hear any witness or read any document or listen to any of the testimony offered from time to time, at various points in the Survey, by declaring that *they* were quite "familiar" with the circumstances of each point or situation as to which the proof in question was offered and that they did not need any such light or aid in locating the boundary. This is a position at war with all reason and justice and which no enlightened tribunal should tolerate for a moment. The testimony of the witnesses proposed to be examined by Mr. Brown and the patents, warrants and deeds and other evidence offered by him were for the enlightenment of the Court in the discharge of its duty of adjudging whether the line located and marked is in accordance with its decision and decree and with the considerations of equity and right by which its Opinion and Decree plainly and professedly were dictated and shaped. It was not for two of the Commissioners, whenever witnesses and testimony was offered for purposes of proof in behalf of one of the parties litigant, to say—"*we know all about it—we are quite 'familiar' with the whole situation—we want no evidence and we refuse to hear or look at it.*"

It was in just that way—upon just that predicate—that Messrs. Monroe and Gannett proceeded to run and actually ran the line which they now are asking the Court to confirm.

See—

Brown's Sup. Rep., pages 3, 4, 5, 14, 15-16, 18, 23, 24, 46, 47, 48, 53, 54, 55.

And see—

Supplementary Report of Messrs. Monroe and Gannett, page 3:

"The majority of the Commission *did not believe* that this tract had any connection with the Old State or Deakins Line, and, *therefore, disregarded it.*"

Page 4:—

"Your Commissioners were *familiar* with the facts in regard to Mr. Moore's claim *at the time and, therefore, did not deem it necessary to take testimony.*"

Page 5:—

"Your Commissioners were *entirely familiar* with the facts *above noted at the time of running this line and did not deem it necessary to take further testimony as to those locations.*"

Page 6, *Idem*; page 7, *Idem*.

And see also the Report of Messrs. Monroe and Gannett (pages 40, 44-45, 47, 49, 51, 56), where the exceptions filed by Mr. Brown are commented on in *brief dogmatic assertions of alleged facts without any reference to any testimony, evidence or proof whatsoever in support of the same.*

In this connection the attention of the Court is respectfully called to the application at the end of Mr. Brown's separate report and exceptions that the Court direct the Commissioners to receive the testimony and evidence which they excluded and refused to receive as well as all other germane evidence, and that upon such evidence, etc., the boundary line be properly located and marked in accordance with the Decree of the Court.

Proceeding with the Second Exception of Commissioner Brown (Separate Report, pp. 4 to 7), it appears that when the Commissioners had run the line from Fairfax Stone to

the beginning of Military Lot 1101, they *calculated* the course of a line which they *believed* would pass through a point to the northward where they *expected* to find a "Four Mile Tree," but when the line was run no object was discovered or discoverable at the place where the alleged "Four Mile Tree" was expected to be as ascertaining the point and no testimony was taken to prove or locate the point sought. Nevertheless, Messrs. Monroe and Gannett still proceeded to prolong the line northward until it intersected a point in the third line of the Maryland Tract called "Covent Garden," surveyed in 1774.

Commissioner Brown then filed an Exception and protest appearing at pages 4 and 5 of the Separate Report. He contended that there was no evidence upon which the line run by Messrs. Monroe and Gannett was established and demanded that testimony be taken and surveys made giving satisfactory proof of the correctness of the location, as to all of which he was ignored by Messrs. Monroe and Gannett.

It is respectfully submitted that neither the report nor the supplementary report of Messrs. Monroe and Gannett furnish any evidence that the line located and run by them at this part of the survey is the true location of the boundary called for by the Decree of the Court and that the Exception of Mr. Brown thereto should be sustained. It cannot be said that the Record in the case furnishes any such evidence. If there is any such testimony the majority Report should point it out. It fails to do this, however. And not only do the majority Commissioners fail to do it, but, as pointed out in the Separate Report of Mr. Brown, page 6, Mr. Monroe admitted upon cross-examination, absolutely, that he had no direct proof of any such line at that point. And see also the testimony of Mr. Monroe, quoted on page 7 of Mr. Brown's Separate Report, showing that the line as run and reported in this vicinity is based on no actual evidence, but merely upon "belief."

As against the line run as above stated by Messrs. Monroe and Gannett from Fairfax Stone northward to the third line of "Covent Garden," and in view of the entire absence of any evidence upon the ground of the existence of the line, Mr. Brown requested and demanded that there being no evidence of the Deakins or Old Line between the points above referred to, the proper course under the Court's Decree was to run a straight line from the Fairfax Stone to the beginning of the tract called "Mt. Pleasant," or to the beginning of the "Pettyjohn Tract" of 400 acres, which point is acknowledged by both the States of West Virginia and Maryland to be in the common boundary between the two States; and for the further reason that a line thus run would answer the calls in the old patents in either State and the oldest line to which any reference exists. This point is declared in the Pettyjohn patent to be "in the line dividing the State of Maryland from the State of West Virginia." And it is admitted by both States to be so, Monument 6 located by Messrs. Monroe and Gannett being at this point.

This request made by Commissioner Brown was ignored. The majority of the Commissioners ran the line in a northeasterly direction from Fairfax Stone to the third line of "Covent Garden" to the point marked by Monument 4 and then made an offset in a northwesterly direction to the point marked by Monument 5, which is in the line, which Commissioner Brown demanded should be run to the beginning of the Mt. Pleasant and Pettyjohn tracts, and acknowledged by both States to be a point in the common boundary between the States. (See map inserted between pages 6 and 7 in Brown's Separate Report.)

By running the line as above described and refusing to accede to the application of Commissioner Brown, the majority of the Commissioners deprived the State of Maryland of a triangular piece of ground about three and three-fourth miles long with a base upward of 400 feet in width

along the third line of "Covent Garden" between Monuments 4 and 5, the apex of the triangle being near Monument 1. Citizens of Maryland, the testimony in the Record shows, have been in possession for many years of the territory embraced in this triangle, have paid taxes thereon to that State and timber was cut and sold from the same under Maryland title.

See Record, testimony of Frear, pp. 1620-21; testimony of Wilson, Record, p. 1163, and the Affidavit of the Treasurer of Garrett County, Maryland, at the end of Brown's Separate Report, pp. 665-66.

It is submitted that it is a great injustice to the State of Maryland to deprive her of this territory without competent proof to locate the line as run by the majority of the Commissioners and here complained of by the State of Maryland. And it is further submitted that such location of the line by the majority of the Commissioners is against the reason and spirit of the Opinion and Decree of the Court in this case, which, as above shown, again and again declare that the boundary shall conform as far as possible to the line recognized and adopted by the people living along the same. It was upon this principle that Maryland was denied the boundary line and territory which she claimed, which, it was understood, she would have been entitled to by the calls in her Charter. The same rule must apply to West Virginia. And where the line is not plainly shown by competent evidence, it should then be located, under the spirit and reason of the Court's Decree where the people have adopted it.

Upon these considerations it is respectfully represented that Mr. Brown's Exception on behalf of Maryland in this respect should be sustained and that the State of Maryland should not be deprived of the territory embraced in the triangle referred to. Moreover, Commissioner Brown's position is supported by the additional important fact that the line

which he urged to be run at this part of the boundary went to a common point acknowledged by both States, by all the people and by all three Commissioners to be in the common boundary of both States.

And in this connection, finally, the attention of the Court is respectfully asked to the patents based upon the series of old surveys from 1774 to 1782, calling for and acknowledging the existence at that time of a State line as running north from the Fairfax Stone, appearing at pages 7-10 in Brown's Separate Report.

IV.

The next Exception filed by Mr. Brown relates to the location of the proposed boundary line at a part of the tract of land called "Re-survey on All the Chances" about 11 miles north of Fairfax Stone.

With respect to this, Mr. Brown offered as testimony and evidence a special warrant granted by Maryland to William Schley September 13, 1858, and a certified copy of the patent issued by said State to said Schley March 23, 1860, being for 1173½ acres, together with other deeds showing the devolution of title of said land and also evidence that the tenants thereof have paid taxes continuously to Maryland on this property from the time of the patent to Schley and exercised all acts of ownership and possession over the same.

Schley's survey was made before the Michler Line was run, and the land on both sides of the line which the majority of the Commission has adopted and which is complained of by Commissioner Brown, has been held in possession under a Maryland title and recognized and adopted by the people as Maryland territory for upwards of forty years.

Messrs. Monroe and Gannett refuse to accept this testimony or any part of the same and proceeded to locate and

mark the proposed boundary line between the end of the twenty-first line of "Re-survey on All the Chances," and a point intersecting or bisecting the nineteenth line of the "Re-survey," which line the majority of the Commissioners supposed to coincide with the fourth line of the tract "Kindness".

By this action the majority of the Commissioners would deprive the State of Maryland of about 587 acres of land held by various persons who have been and are now voters and taxpayers within the State of Maryland. (See Brown's Separate Report, pages 10-16).

From this deprivation the Court is respectfully asked to protect the State of Maryland and her citizens who are immediately concerned, by sustaining Mr. Brown's Exceptions and by directing the Commissioners to receive the proof in question which they have excluded and to run the line as the testimony offered and the Decree of the Court may require.

V.

The next Exception on behalf of Maryland relates to the location of the proposed line between the two States about 17 miles north of the Fairfax Stone and one-half mile north of Monument 15 and at or about a part of the tract "Thomas and Ann."

Mr. Brown offered to prove that a certain part of the tract of "Thomas and Ann" was now held and had been held continuously under a Maryland title and that one Josiah Moon, a citizen and resident of Maryland owns a portion of the original tract of "Thomas and Ann" surveyed by Maryland in 1774 and part of a re-survey of this tract and that Moon has now under fence and in possession a triangle whose location is indicated as shown on page 17 of Brown's Sepa-

rate Report, and that Moon has furthermore paid taxes on this land to Maryland and has cut and consumed the timber on it, and claimed all right and title to it.

Mr. Moon himself appeared before the Commissioners and tendered himself ready and willing to prove the above facts.

Messrs. Monroe and Gannett declined to hear him or to receive any testimony on behalf of Maryland respecting the location in the vicinity mentioned.

Mr. Brown claimed that the line should leave to the State of Maryland Mr. Moon's triangle. Messrs. Monroe and Gannett ran the line so as to cut it off from Maryland and throw it into West Virginia, thereby depriving the State of Maryland of the land it includes.

It is respectfully submitted that the proof in question should have been received, and returned to this Court, that the majority of the Commissioners were in error in rejecting it, that the meaning and spirit of the Decree and the justice and right of the case entitle Maryland to this territory and require that the line be run as urged by Mr. Brown on behalf of Maryland and of Mr. Moon, one of her citizens.

See—

Brown's Separate Report, page 17.

VI and VII.

The Sixth and Seventh Exceptions are of the same nature as the last preceding ones and are so fully set out upon pages 18-39 of Mr. Brown's Separate Report that it is unnecessary to add anything herein to the presentation of the said Exceptions as there set forth.

They relate to the exclusion and rejection by the majority of the Commissioners and their failure to entertain and consider both documentary and oral evidence of the rights of Maryland to territory in the vicinity of a tract of land

called "Border Life" about 17 miles north of the Fairfax Stone and $\frac{7}{8}$ of a mile north of Monument 15 and also at or about a tract of land called "Browning's Manor" about 20 miles north of the Fairfax Stone and about 1,000 feet north of Monument 16. In both these cases, whilst refusing to entertain the abundant testimony proffered by Mr. Brown on behalf of Maryland with respect to the true location in said respective vicinities of the proposed boundary line, as indicated and directed by the Court in its Decree, the majority of the Commissioners so ran the line and have so reported it to this Court that territory which upon the proffered and rejected testimony, Maryland would be entitled to has been awarded to West Virginia.

This action this Honorable Court is asked to interdict and is further asked to direct the Commissioners to permit the testimony to be given with a view of carrying out the Decree and effectuating its just purposes as announced by the Court.

VIII and IX.

With respect to Exceptions Eight and Nine, the Court is respectfully referred to the statement thereof at pages 39-43 of Commissioner Brown's Separate Report.

With respect to the Ninth Exception, pages 41-42, the proof which was offered and which was rejected was intended to show that there was a State line recognized west of the Military Lot as far back as 1828.

X.

The Tenth Exception is an important one, having reference to the survey at a tract called "Agathos" about 23 miles north of the Fairfax Stone and near Monument 19. At

this point Mr. Brown offered to the Commissioners evidence to show that the tract "Agathos" upon a special warrant of survey issued from the Land Office of Maryland, February 27, 1852, and returned to said Land Office September 1, 1852, was patented June 22, 1853, to one Hirman B. Wolfe of Allegany County, Maryland, the tract containing about 330 acres.

Mr. Brown offered title deed and other documentary evidence and also offered to prove that said tract had been in possession of Maryland owners and tenants under Maryland title from the year 1852 to the present day.

See Separate Report, pages 43-44.

The patent and title deeds from the beginning show calls "to the line dividing the State of Maryland from the State of West Virginia."

The majority of the Commissioners refused to receive or consider any of this testimony and disregarded the request of Mr. Brown that it be taken and considered.

See Separate Report, pages 46-47.

In spite of the offer and the protest of Mr. Brown, the Commissioners made an offset at the southern line of the crane survey at right angles towards the east until they intersected the third line of Military Lot No. 1292, thence going northward along the western line of the Military Lots Nos. 1292-1298, thus throwing and including in the State of West Virginia all but about 20 acres of "Agathos" and depriving the State of Maryland of a considerable territory.

This action was taken without any heed or regard to the offer made by Mr. Brown to prove that the territory has been held in possession and is now held in possession by one Hiram Ringer as part of Maryland under Maryland title, that Ringer pays and has paid taxes thereon to Maryland and

acknowledges its sovereignty over said land as shown by the certificate of the Tax Collector of Garrett county, Maryland. The majority of Commissioners thereby deprived Maryland of territory to which, it is respectfully urged, the meaning and spirit of the Decree unquestionably entitled her.

See Brown's Separate Report, pages 47-48.

XI.

The Eleventh Exception relates to the refusal of the majority of the Commissioners to hold regular stated meetings for the discussion of the proceedings, method and manner of running and locating and marking the proposed boundary line and to keep records and minutes of such meetings, etc., etc.

See Separate Report, pages 48-49.

As indicated above, it is contended that the solemnity and importance of the proceeding in which the Commissioners were engaged and the plain and elaborate provisions of the Decree, above cited, made it highly appropriate and a matter of material concern and justice to the parties concerned that *some* formality, in the manner indicated by the Decree, be pursued and maintained with respect to the essential details and circumstances connected with and the method and manner of locating and marking the contemplated boundary. The majority of the Commissioners proceeded without the least regard to such considerations. They had no regular or stated meetings; as far as appears they called no special meetings; there was no organization except the appointment of Mr. Monroe as Secretary and Treasurer; and there being no meetings, it followed that there were no records or minutes of the proceedings except the field notes of the technical

work. There was no examination of witnesses, no testimony taken, nothing of the sort preserved, certified or returned to the Court, or which could have been preserved, certified or returned. Matters affecting the dominion, jurisdiction and territory of sovereign states, and the property, homes, citizenship and allegiance of their citizens and voters are disposed of and concluded by the majority of the Commissioners without any observance of those important formalities which not only the nature of the proceedings require, but the careful and full provisions of the Decree of the Court, under which the Commissioners were acting, clearly contemplate.

XII AND XIII.

As to these Exceptions, the Court is respectfully referred to in pages 49-53 of Mr. Brown's Separate Report.

XIV.

The Fourteenth Exception is to the refusal of the majority of the Commissioners to receive the testimony under oath of Clyde Falkenstein, Charles Falkenstein, Samuel Strawser, W. H. Lewis, F. O. Friend and Eugene Teets as to their allegiance and as to the performance by them of the duties of citizenship. The object of this testimony was to show where the boundary line between the two States has been "*recognized*" and "*adopted*" by citizens residing along the same.

The Commissioners should have received this testimony and certified it to the Court. Their refusal to hear it was material and reversible error.

XV-XVII.

The Fifteenth and Seventeenth Exceptions are of the same nature as the Fourteenth. The Commissioners refused to take the testimony of Jefferson Birch, Sherman Friend, Samuel Falkner, Fred Falkner, Martin Falkner and Meville Friend, residents along the dividing line between the two States, as to which State they gave allegiance, have been called on for duty and paid taxes.

See Brown's Separate Report, pages 54-55.

XIX.

The Nineteenth Exception is to the refusal of the majority of the Commissioners to receive evidence with respect to the dividing line between the States of Maryland and West Virginia, northwards from Monument 18, acknowledged prior to the running of the Michler Line, to the westward of the Maryland Military Lots, yet not so far west as the meridian from the Fairfax Stone. The patents proffered in this connection and rejected are set forth on pages 56-61 of Mr. Brown's Separate Report.

XX, XXI and XXII.

In the paragraphs of his Separate Report Numbered 20, 21 and 22, Mr. Brown brings to the attention of the Court the following important considerations:—

That the map filed by Messrs. Monroe and Gannett with their report in this proceeding is substantially identical with Defendant's Map No. 3, as to which, when referred to by counsel in the argument of this case as a "map." His Honor, the late Mr. Justice Harlan, pointedly inquired, "Do you call

that a map?" The lines and locations upon this "map" correspond with the eastern boundary of Virginia land grants now held by West Virginia. West Virginia never at any stage of the case actually located a line which she claimed to be the boundary.

The State Boundary Line as proposed and marked by Messrs. Monroe and Gannett consists of 15 separate lines whose courses vary materially.

See Separate Report, page 61.

Affidavits of officials of Garrett County submitted at the end of Brown's Separate Report show that many people who have been paying taxes upon real and personal property to Maryland and many citizens, voters and jurors in Garrett County will be deprived of their citizenship and suffer loss and injury in establishing their rights and possession if the boundary proposed by the majority Commissioners should be confirmed.

The interlacing of grants and claims and the contention between the grants made in and along this disputed territory of the several States concerned should have received the closest and most careful attention in locating the boundary in view of the absence upon the ground, with few exceptions, of any objects to guide the Commissioners to an original, consecutive line.

As the Record shows, the Surveyor on the part of the State of West Virginia attempted in 1894 to retrace an old line which he supposed had been run, but failed to do so. When Maryland made her survey in 1897 she counter located the line as run by West Virginia and in order to show that West Virginia had not run "the eastern boundary of Virginia land grants as held by citizens of West Virginia as the Old State Line" (Record, page 1716) Maryland located certain points in this "Old State Line" as shown by the

Virginia land grants," and these are the points given and referred to in the Record, page 948, which said points were located merely as showing the pretensions of West Virginia to an old line which she had not followed in her own running. These points were never sighted or claimed on the part of Maryland as being in the State Boundary, but that they were in the eastern boundary of Virginia land grants as held by citizens of West Virginia.

CONCLUSION.

Accordingly, it is respectfully submitted that this Honorable Court should grant the prayers on behalf of the State of Maryland appearing at the conclusion of Mr. Brown's separate Report, pages 63-4, as follows:

1. That the report of the said Julius K. Monroe and Samuel S. Gannett, the majority of the Commissioners, be not ratified by this Honorable Court.

2. That the several exceptions and protests of the said Commissioner Brown, above set forth, be all and singular sustained.

3. That the matter of the location and establishment of said Boundary Line between said two States be remanded to said three Commissioners, and that testimony and evidence, as offered by said Commissioner Brown and as refused and excluded by said majority of said Commissioners, as aforesaid, be taken and received by said Commissioners, together with such other germane and relevant testimony and evidence bearing upon the location of said Boundary Line, in accordance with said Decree of this Court, as may be offered by or on behalf of either of the said parties to this proceeding.

4. That upon such testimony, as well as upon all other appropriate testimony, evidence, records, facts, surveys, locations, descriptions, and other proper and competent proof in the premises, the said Boundary Line may be marked and run in accordance with the said Decree of this Honorable Court as within such limits of time as to the Court may seem proper.

5. And that such further order may be passed as the Court may deem proper and necessary herein.

EDGAR ALLAN POE,
Attorney-General of Maryland.

ISAAC LOBE STRAUS,
Counsel,
For the State of Maryland.

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Office Supreme Court, U. S.
FILED.

APR 29 1912

JAMES H. McKENNEY,

CLERK.

Supreme Court of the United States

OCTOBER TERM, 1912

NO. 1 ORIGINAL

STATE OF MARYLAND, Complainant

vs.

STATE OF WEST VIRGINIA, Defendant

} In Equity

BRIEF ON BEHALF OF WEST VIRGINIA

BY

WILLIAM G. CONLEY, ATTORNEY GENERAL.

GEO. E. PRICE, SPECIAL COUNSEL.



Union Publishing Co., Charleston, W. Va.



IN THE
Supreme Court of the United States.

OCTOBER TERM, 1911.

THE STATE OF MARYLAND
vs.
THE STATE OF WEST VIRGINIA.

NO. 1 ORIGINAL.

BRIEF FOR THE STATE OF WEST VIRGINIA, ON MOTION
TO CONFIRM THE REPORT OF COMMISSIONERS
JULIUS K. MONROE AND SAMUEL S. GANNETT

By the decree entered in this cause on the 31st day of May, 1910, Julius K. Monroe, W. McCulloh Brown and Samuel S. Gannett were appointed Commissioners "to run, locate, and establish and permanently mark with suitable monuments the said Deakins or Old State Line as the boundary line between the States of Maryland and West Virginia from said point (at low water mark) on the Southern bank of the North Branch of the Potomac River to the said Pennsylvania line."

Mr. Monroe is the surveyor who had been selected by the State of West Virginia to represent said State in all the surveys that were made in this cause before the final hearing on the merits, and Mr. Brown is the surveyor who had represented the State of Maryland

in all said surveys except the first made on behalf of West Virginia, a Mr. Harned having represented Maryland in that first survey. Mr. Samuel S. Gannett is connected with the United State Geological survey and had no previous knowledge of or connection with this cause until he was agreed upon by both parties as the third Commissioner and was appointed by the Court by said final decree along with Mr. Monroe and Mr. Brown.

It appears from a supplemental record filed by Commissioners Monroe and Gannett that the original report which was filed on October 31, 1911 (the last day, we believe, allowed for filing it under the former decree) was prepared and practically completed with the understanding that all the Commissioners would sign it—thus making it unanimous, and for that reason it was not deemed necessary to go into great detail as to the reasons for the location of the boundary as laid out and marked.

But on October 25, 1911, Commissioner Brown notified the other two Commissioners that he would not join in the report and that he would file a minority or separate report. It was then too late to re-write the report, and as the two concurring Commissioners had no information to what the contents of Mr. Brown's report would be they signed and filed the report which had been prepared and then after Mr. Brown's separate report had been filed some days later, they prepared and filed a supplemental report, setting forth at some length and with considerable detail their own views upon the several points raised by Mr. Brown in his separate report and the reasons why they had run the boundary line and marked it as shown in their original report.

These reports are full and present so clearly the matters arising upon Mr. Brown's objections and exceptions that we have hesitated to attempt to prepare a brief upon these questions; but have concluded that it may be of some aid to the Court and relieve it of some labor if we can succinctly point out the matters upon which Mr. Brown differs from the other Commissioners and endeavor to show that they have proceeded entirely in accordance with the decree of this Court and have undoubtedly located the Deakins or Old State Line as it has been generally known and recognized by the people along it and in such way as not to disturb the titles or holdings of the inhabitants except to a very slight extent.

Before proceeding to discuss these reports I think we may be

pardoned for calling attention to the character of the separate report made by Commissioner W. McCulloh Brown and his attitude toward this whole matter. In our former brief filed at the hearing of this case on its merits, on pages 102 to 110 we pointed out and commented upon the strong partisanship displayed by Mr. Brown in his work and report as a surveyor and his testimony in the case, and how his testimony was biased and colored in favor of the party he so ardently represented. This separate report of Mr. Brown's is simply an attempt on his part, as we believe, to keep up a contest over matters already settled, and to try to convince the Court at this late day that there was no Deakins or Old State Line ever run or marked upon the ground, which has been his position and claim during the whole progress of this cause. (See bottom of page 39 of the Original Report of Commissioners Monroe and Gannett.) See also page 6 of Mr. Brown's separate report, in which he quotes Mr. Monroe's testimony originally taken in the case, to the effect that he had no direct proof that Francis Deakins did run a line from the Fairfax Stone northward.

This question has already been definitely settled in this cause. In the opinion of Mr. Justice Day, he uses this language:

"This record leaves no doubt as to the truth of the statement contained in the report of the committee of the Maryland Historical Society, that the Deakins line, before the passage of the act under which the Michler line was run, had long been recognized as a boundary and served as such. Even after the Michler line was run and marked the testimony shows that the people generally adhered to the old line as the true boundary line."

And the decree under which these Commissioners acted directed them to run, locate and establish and permanently mark with suitable monuments the said Deakins or Old State Line as the boundary line between the States of Maryland and West Virginia. Now the whole effort of Mr. Brown in this separate report of his is to show that no such line was run, and to re-open the questions settled by said decree. Instead of simply acting as Commissioner and filing his exceptions and objections and reporting the facts to the Court he assumes the attitude of counsel or advocate, and excepts to the report of the other two Commissioners. And on page 63 he asks the Court not to confirm the report of Monroe and Gan-

nett, but to sustain his exceptions and re-commit the case to the same Commissioners with directions to take testimony, etc. All this would have been proper for the Attorney-General of Maryland, but improper it seems to us in the report of one of the Commissioners, and it is only cited to show the attitude and temper of Mr. Brown in this matter. We cannot but compare the dignified report of the other two Commissioners and call attention to the fact that Mr. Gannett was chosen because of his long experience in matters of this kind by reason of his connection with the United States Geological Survey and to the fact that he was chosen because of his eminent fitness and his entire impartiality.

The Line as Located and Marked by Commissioners Monroe and Gannett Passes Through Practically all the Points Proven to Have Been in the Deakins or Old State Line by the Testimony Which was Before the Court before the Final Decree.

The Court had before it the question as to which of three lines was the true boundary line, namely: the Francis Deakins or Old State Line, the Michler Line, and the Brown-Bauer Line, which they ran from the head of a Branch and at a point which they designated as Potomac Spring. By the proof before the Court it was convinced that there was a Deakins or Old State Line, and the Court came to that conclusion by consideration of the evidence, because in the opinion of Mr. Justice Day, on page 17, this language is used:

"It may be true that an attempt to relocate the Deakins line will show that it is somewhat irregular, and not a uniform, astronomical north and south line; but both surveyors appointed by the States represented in this controversy were able to locate a number of points along the line, and the northern limit thereof is fixed by a mound, and was located by the commissioners who fixed the boundary between West Virginia and Pennsylvania by a monument which was erected at that point, and we think from the evidence in this record that it can be located with little difficulty by competent commissioners."

In his report as surveyor and in his testimony Mr. Brown located some eight points in this old line as pointed out to him by witnesses, owners of lands and residents in the neighborhood, and located by him on the ground and shown on his map. These points were not only shown on the map of Mr. Brown, but on Map No. 1 made

by Mr. Monroe. They are the points designated by the letters "WC," "WD," "WF," "WG," "WI," "WK," "WL," "WM," and "WZ," extending from a point about eight miles North of the Fairfax Stone at intervals all the way to the Pennsylvania line.

Mr. Monroe located and established fifty-one points on this old line, all of which are shown by red letters and figures on his Map No. 1, extending all the way from the point where the line crosses the Potomac to the Pennsylvania line. This matter was fully discussed before the Court. (See pages 280 to 351 of our original brief in this cause, and also pages 398 and 399 in the same brief).

Now a close examination will show that the line run by Messrs. Monroe and Gannett practically conforms to the location of these various points, which were located by the surveyors and testified to by them and other witnesses, *and this is admitted by Mr. Brown in his report.* On page 61 of his separate report now under consideration, he uses the following language:

"During the direct testimony taken in this cause (Record page 1716), the Counsel for the Defendant in this case asked of the Surveyor on the part of the State of West Virginia, Mr. Julius K. Monroe, the following questions, which were answered by Mr. Monroe:

1007th Q. At my request you have also prepared Map No. 3. Will you state what that is intended to represent?

A. 'Map No. 3 is intended to represent the eastern boundary of Virginia land grants as held by citizens of West Virginia *as the old State line, and the several points located in said line as shown on Maps Nos. 1 and 2,* etc.

The attention of the Court is particularly called to Map No. 3 introduced by the defendant in this cause, and to the words contained in the reply of the Surveyor, namely: that it represents 'the eastern boundary of Virginia land grants as held by citizens of West Virginia as the old State Line.'

The map filed by Messrs. Monroe and Gannett with their Report in this proceeding is practically identical with the Defendant's Map No. 3 above referred to and the lines run and marked in said Map No. 3, and furthermore these lines and locations correspond with 'the eastern boundary of Virginia land grants' now held by West Virginia, but do not correspond with the line sur-

veyed by the defendant, West Virginia, upon the ground, before this case was brought before the Court."

Now Mr. Brown knows that this line run by West Virginia was a mere reference line, and was not intended to represent his claim as to the location of the Deakins' or Old State Line. (See page of our original brief.)

Now this defendant's Map No. 3 shows the location of the Deakins or Old State Line, which, as we showed, corresponds with the lines of the Virginia Land Grants and also of the Maryland Land Grants made after the Deakins Line was run in 1789, and the above quotation from Mr. Brown's separate report shows that Messrs. Monroe and Gannett have located and marked the line substantially in accordance with the location of this line and through all the points reported by Mr. Brown to be upon the old State or Deakins Line. Now it is these points in this line that were adverted to and mentioned by Mr. Justice Day in his opinion as going to show that this Deakins or Old State Line had been run, and that it could be re-located and run out and marked with little difficulty by competent surveyors. It would seem hardly necessary to go further in this brief than to show this admission by Mr. Brown that the line located by Monroe and Gannett follows the line represented on Map No. 3, which line runs through the eight points which he reported stood in the old line, and also, as he admits, conformed to the Virginia Land Grants and the Maryland Grants made after 1789, the date when the Deakins Line was run. But it may be proper to call the Court's attention to some of the claims made by Mr. Brown.

His first claim is that a direct line should have been run from the Fairfax Stone to the Southeast corner or beginning point of a tract of land called Mt. Pleasant, which calls for a white oak standing on a line drawn North from the fountain head of the North Branch of the Potomac River. This beginning corner of Mt. Pleasant is the point where monument No. 5 was planted by the Commissioners as shown on the map returned with their report, and it is the point marked "B2" on Monroe's Original Map No. 1. In making this claim Mr. Brown makes an erroneous statement and seeks to create a wrong impression as to the position of the parties to the suit in regard to this part of the line. He says that this white oak at the beginning corner of Mt. Pleasant is acknowledged by both the State

of Maryland and the State of West Virginia as being a common point in the boundary between the States. This Maryland survey of Mt. Pleasant is dated May 22, 1787, two years before the Deakins Line was run. (See page 8 of Mr. Brown's separate report.)

The facts in regard to this matter are these:

From the point five miles North of the Fairfax Stone, marked "B5" on Monroe's Map No. 1, and corresponding with monument No. 5 on the map returned with the report of Commissioners Monroe and Gannett, running Northward to monument No. 10 on said map, corresponding to the point near the point "WC" on Brown's Map, and on Monroe's Map inside of the Royal Charlotte Survey, *there were a series of grants made by the State of Virginia before the Deakins Line was run, the Eastern lines of which surveys corresponded practically with the true meridian from the Fairfax Stone, afterwards run by Lieutenant Michler, but did not correspond with the Deakins Line which was afterwards run.* These grants are shown on Monroe's Map No. 2. They are the "Zera Osborne," surveyed April, 1782, patented June, 1785; "John Pettijohn" 330 acres, surveyed April, 1782, patented May, 1784; "John Pettijohn" 400 acres surveyed May, 1781, patented April, 1784; "John Goff" 1000 acres, surveyed November, 1782, patented June, 1787; "John T. Goff" 868 acres, surveyed October, 1782, patented June, 1787; "John T. Goff" 500 acres, surveyed September, 1787, patented October, 1784, and the "William Deakins, Jr." survey of 200 acres, surveyed September, 1787, patented November, 1788.

Now these old surveys all call for a line running North from the Fairfax Stone, and these old Virginia Grants conform to that line and the citizens along this stretch of about five miles have always held to that old line. The Deakins Line runs East of this, as shown on the maps, but when the Commissioners went to locate and mark this line counsel for the State of West Virginia agreed that they might make an offset from the Deakins Line there Westward for that five miles, corresponding with those old prior grants, and with the holdings of the citizens in order that the land titles might not be disturbed, and that was done by the Commissioners not because it was admitted that these points were in the Deakins or Old State Line, but because that line along there had been established before the Deakins Line and recognized as such, and to disregard it would seriously interfere with the holdings of the people. These

facts were discussed and the Court's attention called to them by counsel on the hearing of this case on its merits. (See pages 354, 355 and 356 of the original brief on behalf of West Virginia.) Now South of this space the location of the Deakins Line as run by him was clearly and abundantly proven and its location, as so proven, has been followed by Messrs. Monroe and Gannett.

There was filed with the answer of the State of West Virginia, as Exhibit No. 1, a copy of the Deakins Map, showing the Military Lots laid out by Francis Deakins along the Western line from the Fairfax Stone. The Southwestern-most lot on the map was Lot 1101, and North of that, 1102, and the description of that Lot No. 1101 was as follows:

“Beginning at a bounded maple marked 1100, standing one mile North from stone fixed by Lord Fairfax for the head of the North Branch of the Potomac River, and running North $89\frac{1}{2}$ perches, East $89\frac{1}{2}$ perches, South $89\frac{1}{2}$ perches, and then by a straight line to the beginning, containing 50 acres.”

Now in 1894, when this first survey was made on behalf of the State of West Virginia in this cause by Mr. Monore, he found just about one mile North of the Fairfax Stone, or rather a little East of North, this beginning point of this Lot No. 1101, marked by a stone, which was marked “B1101,” and also found an ancient fallen maple right at this stone; and considerable testimony was taken with reference to this stone, and the location of said Lot 1101 showed clearly that it was located just as Deakins had located it in 1789. It had been recognized in running all the surveys located in that neighborhood. Mr. Brown says in his separate report (Page 6), that the stone marked “1101 B,” frequently referred to, is not an ancient object, but was placed in its present position and lettered by W. McCulloh Brown in the course of the survey of a tract of land called “Fairfax,” in the year 1876, for the purpose of marking one of the corners of that tract then surveyed. Now that tract called “Fairfax” that Mr. Brown was running in 1876, we presume is the F. W. Deakins Tract of 9000 acres, patented to Francis Deakins by the State of Virginia June 21, 1794, based on a survey made November 19, 1792. This patent is found on page 1860 of the Record and is referred to on page 357 of the original brief on behalf

of the State of West Virginia. That patent has the following calls:

“Beginning at a bounded sugar tree standing S. $4\frac{1}{2}$ degrees E. 180 poles from Fairfax Stone at the head of the N. Branch of the Potowmack, and running E. 70 poles N. 100 poles W. 30 poles, N. 316 poles, W. 52 poles to the Maryland line, and with it N. 80 poles to a maple marked ‘1’ standing at the end of one mile on the Maryland Line run from Fairfax Stone aforesaid.”

Now it will be remembered that this maple marked “1” standing at the end of one mile on the Maryland Line is the beginning of Deakins Military Lot No. 1101, where Mr. Monroe found the old maple down, and where Mr. Brown, in 1876, planted the stone marked “B 1101.” Then there was the John Hoy patent of 72 acres, which was also located from this point, and a grant to Wilson, Morris and Byrne of 600 acres, dated February, 1854, and a survey made April, 1853, which calls to adjoin the Maryland line and a corner of the John Hoy 72 acres, and it was proven by Mr. Loar that the boundary line along here was showed to him by George Mosser, a witness then dead, and who was relied upon as one of the witnesses for the plaintiff for the location of lands and other information about ancient boundaries; one of the oldest citizens in all that country; and then the boundary line was also shown to Mr. Loar by Eli Mosser, and also shown to him by a son of Reuben Morris, who was the original surveyor by whom the land was located in 1853. This man Reuben Morris was the owner of the land along there and sold it to Loar. All this testimony was taken about this boundary line, and a great deal more.

Mr. Monroe found at the point marked red “A2” on his Map No. 1 an anciently marked hemlock on this line, and at the point 744 poles from the Fairfax Stone he found another hemlock anciently marked on this line, marked red “A3”; and then he found a large chestnut oak marked as a corner with a stone pile and pointers, described on the map as red “A4”. This was a corner of the Wilson-Byrne tract of 600 acres now known as the Loar tract. He also located a large hemlock tree anciently marked on this line at 1189 poles, designated by red “A6,” and another dead hemlock marked fore and aft on this line, designated red “A7,” at 1201.6 poles, and an old chestnut marked as a side line, at 1251.6 poles,

designated red "A8." This brings you to the four mile point, about where the offset begins, which was made on account of the old patents which were issued before the Deakins Line was run, as above mentioned.

Now all this matter was fully discussed in briefs of counsel and before the Court on the hearing of this cause. (See pages 285-287 of the original brief for the State of West Virginia in this cause; also page 357 of said brief; also discussion of the Maryland survey of West Point, page 366-368 of said brief). A great many additional facts might be mentioned as going to show that this location of the Deakins line in that locality was fully proven, and that the State of West Virginia probably would have been justified in insisting upon running the line continuously from the point at Monument No. 1 on Monroe and Gannett's Map, through Monument No. 4 to Monument No. 11, where the offset is made, back on to that line. The Court can see that it would have been almost a continuously straight line if that had been done, but, as above stated, the concession was made to the State of Maryland and to her citizens, without question, that the line might follow these old Virginia Grants along there and not disturb the Maryland titles, and it is not true, as stated in Mr. Brown's separate report, that the State of West Virginia conceded that the points in these old grants were on the Deakins line, but conceded that they were on a line that had been run before the Deakins line had been run, and therefore it was proper to allow that line along there to stand.

Four Mile Tree.

As to the location of Four Mile Tree, Messrs. Monroe and Gannett explain that on page 2 of their supplemental report.

This tree had been definitely located on the surveys made in 1894, and, whilst they were not able to find any object at this point in 1910, they were able to re-locate it by other objects which they did find, and therefore there is no question as to its correct location. Now remember that this is one of Deakins' trees: The Three Mile Tree called for in the Maryland patent of West Point, above shown. The One Mile Tree was the beginning corner of Military Lot No. 1101, and the Two Mile Tree is also shown on the Deakins Map, and on Monroe's Map, all on the line as established by Monroe and Gannett.

The fourth exception by Mr. Brown relates to the Maryland patent called "Re-survey on all the Chances." (See pages 10 to 16 of his separate report). Messrs. Monroe and Gannett comment upon this exception on page 3 of their supplemental report, showing that it could have been of no possible service in locating the Deakins or Old State Line. Therefore they considered it unnecessary to locate this survey, it being apparent that it was made not with reference to the Old State Line, but was made in 1859 with reference to the Michler Line, although it did not reach the Michler Line by 20 poles.

Mr. Brown's fifth exception (page 17 of his separate report), relates to a little triangle which he says contains 7 acres, but which Messrs. Monroe and Gannett say contains 1.1 acres, held by a Mr. Moon, extending over the Deakins Line as run by Monroe and Gannett, claimed by Moon under the Maryland patent of "Thomas and Ann." Mr. Brown wanted the Commissioners to make a dent in their line so as to throw this 1.1 acres into Maryland. They properly declined to do so, as shown by their statement on page 4 of their report.

Mr. Brown's sixth exception is as to the Maryland patent called "Border Life," about seventeen miles North of the Fairfax Stone. This patent is dated December 28, 1870. (Page 18 of his separate report.)

His seventh exception is in regard to the Maryland patent for "Browning's Manor", about twenty miles North of Fairfax Stone. (Page 22 of his separate report.)

His eighth exception is in regard to the Maryland patent called "Home", issued in 1857. (Page 39 of his separate report.)

His ninth exception is in regard to the Maryland patent called "Scales", issued in 1830.

Messrs. Monroe and Gannett comment upon these exceptions in their supplemental report, pages 4 and 5, and show their location on Map 3 filed with said report. "Border Life" is covered by the Virginia patent to Deakins for 6,000 acres, issued September, 1789.

"Browning's Manor" is covered by the Virginia patent for 3,600 acres to Martin and Hoy issued November 16, 1800. "Home" is practically covered by the same Virginia patent. None of these patents were offered in evidence by the State of Maryland in this cause before the hearing on the merits, nor was any testimony

taken with reference to their location; whilst the State of West Virginia filed patents covering all this territory, and provided possession and occupation up to the Old State or Deakins Line.

Now the Commissioners, we contend, rightly decided that it was useless to go into these questions of these surveys which had been purposely kept out of the case, though it seems the Commissioners did ascertain from the calls of the surveys what their location was and correctly concluded that they could throw no light whatever upon the Deakins or Old State Line. It is along this part of the line that Mr. Brown located the points "WG" and "WK" in the Deakins or Old State Line. A large number of other points were located by Mr. Monroe.

Mr. Brown's tenth exception is in regard to the Maryland patent Agathos (page 43 of his separate report.) This patent was issued in 1853, but was not introduced by the State of Maryland originally in this case, and it is shown by the supplemental report of Messrs. Monroe and Gannett that the four tracts of Agathos, Lagonia, Tudor and Pine Swamp were produced for the first time by Mr. Brown in this cause before the Commissioners, none of them having been introduced originally in the cause, they are all comparatively recent grants. No two of them having Western lines in common or on the same line; that two of them run as far West as the Michler line, and that all that territory is covered by surveys previously granted by the State of Virginia and has been in possession under these Virginia grants up to the old line as located by Messrs. Monroe and Gannett. (See their Map No. 4 of their supplemental report and their comments on these patents, pages 5 and 6 of their supplemental report.) This disposes of Mr. Brown's exceptions 11, 12 and 13.

As to his exception No. 14, in which he requests that the Commissioners examine the patent of the Diadem and all papers relating to the sub-division and take the testimony of Falkenstein and others (pages 53 and 54 of the separate report), Messrs. Monroe and Gannett, in their supplemental report, on pages 6 and 7, explain fully and clearly why the Commissioners did not think it necessary to encumber their report with the testimony of these witnesses. This matter of the Diadem was fully tried and discussed on the hearing of this case on its merits, and it was shown that it is covered by Virginia patents, and none of the parties living on it,

except Ethbel Falkenstein, claimed to hold under the State of Maryland. All the rest claimed under the Virginia titles and recognized Virginia authority.

Mr. Brown's sixteenth exception relates to the Maryland tract called "Canrobert." The reason of the Commissioners for declining to go into an investigation of this matter any more fully than they did is set forth on page 7 of their supplemental report, showing that this whole territory is covered by the Banks patent of 8000 acres and held by parties claiming under this title and taxes paid in Virginia and West Virginia, and that Commissioner Brown, while on the ground, during the survey, admitted that he was unable to find any evidence upon the ground of a line West of the Banks line.

With reference to Mr. Brown's exceptions Nos. 17 and 18, Messrs. Monroe and Gannett show that these parties, whose testimony he proposed to take, reside within the Virginia patents and hold under them, and state that "there is absolutely no contention between the citizens of the two States as to the boundary from Monument 28 North to the Pennsylvania State Line. Citizens of both states pointed out to your Commissioners numerous land marks as standing in the 'State Line' during the running of that portion of the boundary."

They further say:

"We desire to say in conclusion that the boundary line as laid out and marked in 1910-11, in our judgment, conforms as nearly as it is possible to make it, to the opinion and decree of this Court, and as located least disturbs the titles of citizens residing along it; and that, with very rare exceptions, the citizens of both States residing along the boundary as located are satisfied." (Pages 8 and 9 of their supplemental report.)

CONCLUSION.

In conclusion, we do not see that the Court needs any further light upon this question than that to be derived from the reports of the Commissioners themselves. Mr. Brown's main grievance seems to be that the Commissioners did not see proper to take original evidence on the ground of witnesses produced by the parties as to the location of the various objects and points in this old Deakins or State Line, on his request, and to locate a number of

recent patents issued by the State of Maryland, which were not introduced in evidence in the case originally, and which evidently could have no bearing upon the location of the Deakins or Old State Line. Now it appears that the Commissioners carefully examined the evidence and reports already filed in the case, compared it with the ground itself, and fully satisfied themselves as to the location of the different points in the line and concluded that no additional testimony was necessary; and we submit that this was strictly within the province of the Commissioners under the decree of the Court. All that was necessary for them was to satisfy themselves as to the location of the Old Deakins or State Line, and then to mark it according to the usual rules of surveying.

We believe that an examination of Mr. Brown's separate report will disclose the fact that, except as to that part of the line running from the point where the line crosses the Potomac River, near Fairfax Stone, to Monument No. 4, on Monroe and Gannett's Map, Mr. Brown does not point out or attempt to point out where the Deakins or Old State Line ought to be. In all other instances it was simply a demand to take testimony, and *he does not show by his exceptions that if the testimony had been taken it would have led to a different location of the Deakins or Old State Line. In order that his exceptions shall be worthy of consideration he should show what the evidence offered would have been and its effect upon the location of the Deakins or Old State Line.* He fails utterly to do this, simply seeking to introduce evidence that certain patents granted shortly before the Michler Line was run called for a line between Maryland and Virginia, somewhat West of the line adopted by Monroe and Gannett. But he does not claim that the line called for in these patents was intended to be the Deakins or Old State Line, and it is manifest it could not have been, because as shown by the supplemental report of Monroe and Gannett, these patents have no common line, and the Western boundary does not correspond with any known or recognized line.

In point of fact, it was probably the granting of these patents in 1854, 5, 6 & 7, that led to the selection of Lieutenant Michler by the two States to retrace the boundary line, and Virginia never recognized any Maryland title under these patents, but had long before covered the territory by her own grants and it was occupied by her own citizens and has so continued, except in a few instances

where just before, and in some instances, since this suit was brought, parties have moved in on that part of the territory called "Browning's Manor." There are a few people who went in there since this suit was brought, as shown by the supplemental report of Monroe and Gannett, and it is as to these people that Mr. Brown makes so much fuss.

We submit, therefore, that this report of Messrs. Monroe and Gannett should be confirmed. The line run by them complies in all respects with the final decree of this Court. It is fair and just to all parties. No body will be injured by it because there is no trouble about the State of West Virginia confirming the titles of any persons occupying any of this territory West of the line run by Monroe and Gannett, where it is proper and equitable, though in our judgment there never will be any question raised as to the titles of such persons, there never having been any effort to disturb them heretofore. It is greatly to be desired that this line as located by Monroe and Gannett, *now permanently marked with enduring monuments*, should be confirmed and established by this Honorable Court so that this long continued controversy may be ended. *Interest respublica ut sit finis litium.*

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